90-804

No. _____

In The

Supreme Court of the United States

October Term 1990

ALLEN L. FEINGOLD, ESQUIRE,

Petitioner,

v.

DISCIPLINARY BOARD OF THE COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is whether a state court rule which governs the conduct of proceedings seeking to discipline attorneys accused of wrong-doing and which imposes the entire cost of prosecution on the attorney, even though the attorney has been exonerated of most of the charges which had been filed against him, violates the Fifth and Fourteenth Amendments to the United States Constitution since the rule provides no standards by which costs are to be assessed and denies the attorney a hearing to challenge the assessment.

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No. _____

In The

Supreme Court of the United States

October Term 1990

ALLEN L. FEINGOLD, ESQUIRE,

Petitioner,

v.

DISCIPLINARY BOARD OF THE COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Allen L. Feingold, Esquire, the Petitioner herein, prays that a writ of certoriari issue to review the judgment of the Supreme Court of Pennsylvania in the above-entitled case on October 3, 1990.

OPINION BELOW

The Order of the Supreme Court of Pennsylvania of October 3, 1990, is unreported and is printed in the Appendix, p. 101, infra. The Disciplinary Docket of the Supreme Court of Pennsylvania is printed in the Appendix, p. 1, infra.

JURISDICTION

The Order of the Supreme Court of Pennsylvania (See App., p. 101, infra), was dated October 3, 1990. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1257.

STATUTE INVOLVED

Pa. R.D.E. 208(g)(2), provides as follows:

> "In the event a proceeding is concluded by informal admonition or private reprimand, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney. All expenses taxed by the Board under this paragraph shall be paid by the respondent-attorney on or before the date fixed for the appearance of the respondent-attorney before Disciplinary Counsel or the Board for informal admonition or private reprimand. The expenses which shall be taxable under this paragraph shall be prescribed by Board rules."

Amendment V to the United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on

a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV to the United States Constitution:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

STATEMENT OF THE CASE

The Office of the Disciplinary Counsel of the Supreme Court of Pennsylvania charged numerous violations of the Pennsylvania Rules of Processional Conduct and Disciplinary Rules stemming from the alleged improper manner in which the petitioner conducted his legal practice. These charges were contained in Disciplinary Petitions 34 DB 86 and 19 DB 87 and consisted of eight separate cases in which the petitioner was involved and made seventy (70) allegations of impropriety.

These Disciplinary Petitions were submitted to a hearing committee of the Disciplinary Board pursuant to Pa. R.D.E. 208(b). Following lengthy and extensive hearings occupying fourteen (14) days, at which numerous witnesses testified, by Order of the hearing committee filed March 15, 1990, the petitioner was exonerated of all but two of the seventy (70) allegations of disciplinary infractions. The committee ruled that the petitioner violated D.R. 2-110(B)(4), 5-105(B) and 9-102(B)(4), when he failed to seek the release of his client's funds which had been deposited with the Prothonotary of the Court of Common Pleas of Philadelphia County, pursuant to order of the Court, and failed to withdraw his appearance for one of his clients after the client was joined in the action as an additional defendant. (See App., pp. 9-12, infra.) As a result of the hearing committee's decision, a private reprimand was recommended pursuant to Pa. R.D.E. 204(a)(5). (See App., pp. 9-12, infra.)

Disciplinary Counsel then filed exceptions to the hearing committee's recommendation. By decision of the Disciplinary Board of the Supreme Court of Pennsylvania dated August 9, 1990, the recommendation of the hearing committee was adopted. (See App., p. 15, infra.) The petitioner was exonerated of all but two of the seventy (70) charges and was found to have violated D.R. 2-110(B)(4), 5-105(B) and 9-102(B)(4). The Board determined that the petitioner was to receive a private reprimand. (See App., p. 87, infra.)

Thereafter, by letter dated August 9, 1990, the Disciplinary Board assessed costs against the petitioner in the amount of $6,873.84 (See App., pp. 88-89, infra.). The costs assessed against the petitioner included costs

incurred in the investigation and prosecution of the matters in which the petitioner was exonerated by the hearing committee and the Disciplinary Board. Moreover, the costs assessed the petitioner, were unreasonable since they were excessive and incurred in investigatory proceedings which were unnecessary.

Pursuant to Disciplinary Rule Section 89.205(f)(2), the petitioner filed a petition for review, with the Supreme Court of Pennsylvania, (See App., p. 93, infra.). Office of Disciplinary Counsel filed an answer to the petitioner's petition for review (See App., p. 96, infra.). By Order of the Supreme Court of Pennsylvania dated October 3, 1990, the petition for review was denied.

REASON FOR GRANTING WRIT

The issue in this case is whether the Fifth and Fourteenth Amendments to the United States Constitution were violated when the Disciplinary Board of the Supreme Court of Pennsylvania assessed costs of the prosecution of allegations of misconduct in violation of State Disciplinary Rules for matters in which the attorney is exonerated in the absence of standards by which the assessment is to be made or a hearing to contest the assessment. The petitioner submits that imposition of costs under these circumstances is a violation of the Due Process Clause to the United States Constitution.

Pa. R.D.E. 208(g)(2) provides as follows:

> "In the event a proceeding is concluded by informal admonition or private reprimand, the Board in its discretion may direct that the necessary expenses incurred in the investigation and

> prosecution of the proceeding shall be paid by the respondent-attorney. All expenses taxed by the Board under this paragraph shall be paid by the respondent-attorney on or before the date fixed for the appearance of the respondent-attorney before Disciplinary Counsel or the Board for informal admonition or private reprimand. The expenses which shall be taxable under this paragraph shall be prescribed by Board rules."

Rule 208(g)(2) provides absolutely no notice to the attorney accused of professional misconduct that the costs of the prosecution may be assessed against him/her even though he/she is exonerated of the allegations or standards by which the assessment is to be made. These omissions are substantial since they deny the attorney any opportunity to defend against the assessment of costs.

In the context of criminal prosecutions, there is no dispute that "a defendant convicted of fewer than all the counts of an indictment cannot be properly taxed with the costs of the counts on which he was acquitted or otherwise discharged." *United States v. Troiani,* 595 F.Supp. 186 (N.D.Ill. 1984). See also, *United States v. DeBrouse,* 652 F.2d 383 (4th Cir. 1981); *United States v. Miller,* 223 F. 183 (S.D.Ga. 1915); *Commonwealth v. Smith,* 329 Pa. Super. 440, 361 A.2d 881 (1976).

Herein, while the petitioner was not charged with a crime, the consequences he faced were as serious, if not more so, as those which are presented by a criminal prosecution. Despite this, Rule 208(g)(2) permits the assessment of costs against the petitioner even though he was exonerated of most of the allegations of misconduct.

Moreover, Rule 208(g)(2) fails to provide any standards by which costs are to be assessed and denies the attorney the right to a hearing to contest the assessment of costs. This results in the denial of substantial liberty and property interests without notice or hearing in violation of the Due Process Clause of the Fourteenth Amendment.

> "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments. *Matthews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 901, 47 L.Ed.2d 18 (1976). The 'specific dictates' of due process may be determined by consideration of three factors:
>
> > "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Id. at 335, 96 S.Ct. at 903.

The property and liberty interests affected here are substantial. Entry of a civil judgment, suspension of a driver's license, arrest and imprisonment are all state actions which may be taken only in compliance with procedural due process. See, e.g., *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (convicted defendants have a liberty interest in parole that requires

hearing prior to revocation); *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971) (state must provide a hearing prior to revocation of driver's license).

In *Giaccio v. State of Pennsylvania*, 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed.2d 447 (1986), this Court had occasion to review a statute which permitted the imposition of the costs of prosecution by the jury on a criminal defendant who had been acquitted of the charges. This statute provided as follows:

> "In all prosecutions, cases of felony excepted, if the bill of indictment shall be returned ignoramus, the grand jury returning the same shall decide and certify on such bill whether the county or the prosecutor shall pay the costs of prosecution; and in all cases of acquittals by the petit jury on indictments for the offenses aforesaid, the jury trying the same shall determine, by their verdict, whether the county, or the prosecutor, or the defendant shall pay the costs, or whether the same shall be apportioned between the prosecutor and the defendant, and in what proportions; and the jury, grand or petit, so determining, in case they direct the prosecutor to pay the costs or any portion thereof, shall name him in their return or verdict; and whenever the jury shall determine as aforesaid, that the prosecutor or defendant shall pay the costs, the court in which the said determination shall be made shall forthwith pass sentence to that effect, and order him to be committed to the jail of the county until the costs are paid, unless he give security to pay the same within ten days."

The Court held Pennsylvania's 1860 Act, 19 P.S. Section 1222, was unconstitutionally vague as it provided the jury no standard by which to assess costs. This Court stated:

> "This 1860 Pennsylvania Act contains no standards at all nor does it place any conditions of any kind upon the jury's power to impose costs upon a defendant who has been found by the jury to be not guilty of a crime charged against him.
>
> * * *
>
> Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce this state Act as written does not even begin to meet this constitutional requirement."

This Court also noted that the absence of standards by which the jury is to impose costs denied the defendant an opportunity to prepare a defense to the assessment of costs.

Herein, Rule 208(g)(2) fails to provide any standards by which costs are to be assessed and fails to provide the attorney a hearing to challenge the imposition of costs. During the disciplinary proceedings, the attorney's concern is with defending against the allegations of misconduct. He is not on notice that even if he has successfully defended against the charges, the cost of the prosecution may nevertheless be assessed against him. In that case, he is denied the opportunity to defend against the assessment of costs. Following the imposition of discipline or a finding of exoneration, the attorney may obtain review of the assessment of costs by filing a petition for review in

the Supreme Court of Pennsylvania under Disciplinary Board Rule Section 89.205(f)(2).

The inequity which results from the absence of any standards by which to assess the costs of prosecution is readily apparent in this matter. The petitioner was assessed costs for unnecessary items such as the costs of a deposition concerning a matter not in dispute, issuance of subpoenaes which could only be obtained from the Disciplinary Board and copying of the parties' briefs, which were required by the hearing panel. The frivolity of the allegations of misconduct against the petitioner, seventy (70) in number, of which the petitioner was exonerated, except for two (2), was readily apparent to the hearing board and rendered the extensive hearings unnecessary.

The petitioner submits that Rule 208(g)(2) results in the denial of due process of law. Under Rule 208(g)(2), the attorney is not entitled to an evidentiary hearing on the issue of the assessment of costs at which he is afforded an opportunity rebut the Disciplinary Board's assessment. The attorney is left to merely filing a petition setting forth his arguments in support of his challenge to the assessment.

The assessment of costs against an attorney who has been exonerated of all allegations of impropriety has the necessary effect of "chilling" the attorney's right to contest the allegations. The attorney may forego challenge to the allegations or presentation of a complete defense for fear of beir g assessed with the costs of a protracted proceeding. This is especially the case where, although the allegations are rather minor in nature, the costs of the prosecution may result in financial ruin to the attorney.

An attorney's ability to challenge a frivolous disciplinary petition may be thwarted by the knowledge that he is responsible for the costs of his defense, as well as the costs of the entire prosecution. This is compounded by the fact that Rule 208(g)(2) provides absolutely no provision for determining whether the attorney has the financial ability to assume responsibility for the costs.

The Disciplinary Board may argue that the failure of Rule 208(g)(2) to provide standards by which the assessment of costs is to be made or provide the attorney with notice and an opportunity to be heard, is not unconstitutional since it is not a penal statute. The petitioner submits that this is a difference without a distinction. As this Court stated in *Giaccio v. Pennsylvania,* supra:

> "Whatever label be given the 1860 Act, there is no doubt that it provides the State with a procedure for depriving an acquitted defendant of his liberty and his property. Both liberty and property are specifically protected by the Fourteenth Amendment against any state deprivation which does not meet the standards of due process, and this protection is not to be avoided by the simple label a State chooses to fasten upon its conduct or its statute. So here this state Act whether labeled 'penal' or not must meet the challenge that it is unconstitutionally vague."

While the Commonwealth of Pennsylvania may have a legitimate state interest in supporting the administrative mechanism to investigate and prosecute allegations of misconduct by attorneys, assessment of costs against an attorney who has been exonerated does not further this interest. In Pennsylvania, each attorney is assessed

an annual fee under Pa. R.D.E. 219(a). This, together with assessments of costs against attorneys who have been found to have violated the Code of Professional Conduct and the Disciplinary Rules is more than an adequate funding base by which to support the administrative mechanism.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ Allen L. Feingold
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Attorney for Petitioner
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No. _____

In The

Supreme Court of the United States

October Term 1990

ALLEN L. FEINGOLD, ESQUIRE,

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v.

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Respondent.

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765 DISCIPLINARY DOCKET NO. 2

ATTORNEY RESPONDENT:
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Suite 809 One East Penn Square
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(915) 564-3500

OFFICE OF DISCIPLINARY COUNSEL	Discip. Bd. No.: 34DB 86 19 DB 87
V.	Attorney I.D. No.:
ALLEN L. FEINGOLD	03892

August 27, 1990. Petition for Review, filed. (by A. Feingold, Esq.)

September 28, 1990. Respondent's Reply to Disciplinary Counsel's Answer to Respondent's Petition for Review, filed.

ORDER

PER CURIAM:

AND NOW, this 3rd day of October, 1990, Respondent's Petition for Review is denied.

October 4, 1990. Certified copies of Order EXIT to: Respondent by Certified Mail No. P479851616, RETURN RECEIPT REQUESTED and by 1st class mail to: Respondent, Asst., Disc., Counsel, Paul J. Burgoyne Esquire, Deborah A. Cackowski, Esq., Chief Disc., Cousnel [sic], Robert H. Davis, Esq., Deputy Chief Disc., Counsel, Nan Cohen Sec. to the Bar

DISCIPLINARY COUNSEL:
Burgoyne, Esq.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 34 DB 86
Petitioner	:	Atty. Reg. No. 03892
vs.	:	
ALLEN L. FEINGOLD	:	
Respondent	:	
OFFICE OF DISCIPLINARY COUNSEL	:	No. 19 DB 87
Petitioner	:	Atty. Reg. No. 03892
vs.	:	
ALLEN L. FEINGOLD	:	
Respondent	:	

REPORT OF HEARING COMMITTEE 1.07

Sally J. Bellet, Chairperson
1500 Municipal Services Bldg.
Philadelphia, PA 19102

Howard J. Creskoff
227 South Sixth Street
Philadelphia, PA 19106

Edward G. Bauer
309 Devon Lane
West Chester, PA 19380

FILED MAR 15 1990

The Disciplinary Board of the
Supreme Court of Pennsylvania
/s/ Nan M. Colm
Secretary

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BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 34 DB 86
Petitioner	:	Atty. Reg. No. 03892
vs.	:	
ALLEN L. FEINGOLD	:	
Respondent	:	
OFFICE OF DISCIPLINARY COUNSEL	:	No. 19 DB 87
Petitioner	:	Atty. Reg. No. 03892
vs.	:	
ALLEN L. FEINGOLD	:	
Respondent	:	

I. INTRODUCTION

The Office of the Disciplinary Counsel ("Petitioner") has charged Alan [sic] L. Feingold, Esquire ("Respondent") in two Petitions for Discipline, 34 DB 86 and 19 DB 87, with 70 violations of the Disciplinary Rules of the Code of Professional Responsibility. The Petition for Discipline filed at 34 DB 86 contains five charges brought by five clients; the Petition for Discipline filed at 19 DB 87 contains three charges filed by three clients. Because of the unusual number of charges and violations of the Disciplinary Rule of the Code of Professional Responsibility brought against the Respondent by the Petitioner in two separate Petition for Discipline filed before the same hearing committee, Hearing Committee 1.07

("Hearing Committee") will structure its report as follows: I. *Introduction* (the instant section); II. *Rulings on Admission of Evidence and Other Procedural Matters*; III. *The Charges*. Section III. *The Charges*, will be divided into a section for each of the eight charges, and within each charge, the following four sections will appear:

1. *Statement of the Case*. A statement of the case for that charge, including the transgressions alleged and the provisions of the Code of Professional Responsibility and Rules of Professional Conduct involved in that charge.

2. *Findings of Fact*. Findings of Fact for that charge.

3. *Discussion*. A Discussion for that charge.

4. *Conclusions of Law*. A Conclusion of Law for that charge.

After all the charges have been disposed of, the report of the Hearing Committee will conclude with one section containing its recommended disposition of Petition For Discipline 34 DB 86 and Petition for Discipline 19 DB 87 (IV. *Recommended Disposition of the Petitions*).

II. Rulings on Admission of Evidence and Other Procedural Matters

Petition for Discipline 34 DB 86 was filed on June 18, 1986. Petition for Discipline 19 DB 87 was filed on March 25, 1987. On or about August 1, 1986 the Secretary to the Disciplinary Board assigned 34 DB 86 to Hearing Committee 1.07. The Petition for Discipline 19 DB 87 was assigned to Hearing Committee 1.07 on April 24, 1987. Respondent did not file an answer to either petition and the charges were therefore deemed at issue pursuant to

Rule 208(b)(3) of the Pennsylvania Rules of Disciplinary Enforcement. At the pre-hearing conference held on November 19, 1986, Respondent requested a postponement of the hearing so that his recently retained counsel would be able to prepare a defense. The Hearing Committee granted the request for a continuance and hearings were thereafter conducted, for 34 DB 86, and, after 19 DB 87 was filed on March 25, 1987, for 19 DB 87, on November 25, 1986 (deposition), January 13, 1987, January 14, 1987, January 15, 1987, April 29, 1987, June 3, 1987, June 4, 1987, June 10, 1987, June 23, 1987, March 17, 1988, March 18, 1988, July 21, 1988 and May 23, 1989. The petition filed at 19 DB 87 joined three additional charges to the petition filed at 34 DB 86. Petition for Discipline 19 DB 87 was joined for prosecution with Petition for Discipline 34 DB 86 and assigned to the same Hearing Committee on April 24, 1987, in the middle of the hearings on 34 DB 86. A pre-hearing conference was scheduled for June 24, 1987 in connection with 19 DB 87. Respondent objected to the joinder of the two petitions in a single proceeding. On June 15, 1987, Respondent filed an Application for Relief with Respect to Disciplinary Proceedings in the Supreme Court docketed at No. 581 Disciplinary Docket No. 2.

On June 18, 1987 Petitioner filed a Motion to Quash Application for Relief with Respect to Disciplinary Proceeding and, in the alternative, a Response to Application for Relief of Office of Disciplinary Counsel.

While Respondent's application was pending in the Supreme Court, a pre-hearing conference was held in 19 DB 87 on June 24, 1987 and hearings were thereafter scheduled. Application was made to the Chairman of the

Disciplinary Board for a continuance pending a determination of the Respondent's application to the Supreme Court. By Order dated August 10, 1987, the Chairman of the Disciplinary Board granted a continuance, with the proviso that if the Supreme Court did not decide Respondent's application by December 15, 1987, Respondent would withdraw his application and the matter would proceed. The Supreme Court did not act on Respondent's petition by December 15, 1987, and the Hearing Committee proceeded with the hearings.

During the extended hearings in this matter, numerous rulings on evidence were made; however, none of the rulings has been seriously challenged and do not appear to be at issue or controlling. Essentially, after numerous conferences with counsel, all evidentiary disputes were resolved amicably.

* * *

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3. The evidence presented by the witnesses is not clear and convincing that Respondent filed an improper uninsured motorist claim nor that Respondent engaged in any fraud, misconduct, corruption or other irregularity or that Respondent improperly pursued the no-fault claim in this matter nor that the Gallaghers did not approve of Respondent's course of action on their behalf.

4. Respondent did not violate the following Disciplinary Rules of the Code of Professional Responsibility: DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 7-102(A)(1), DR 7-102(A)(2). DR 7-102(A)(3), DR 7-102(A)(5), DR 7-106(C)(5).

IV. Recommended Disposition of the Petitions

It is clear that an attorney who does not fit in the conventional mold and who maintains a large and active practice by himself with minimum staff, filing motions, pleadings, petitions, briefs and other tools of his profession in great profusion and utilizing unorthodox methods, will not be subject to discipline merely for his liberal and use of appeals and frustrating personal style. *In Re: Anonymous* No. 43 DB 77 and 43 DB 78, 10 D&C 3rd 637, 645 (1979).

Respondent's energy and tactics in the representation of his clients, his frequent resort to personal law suits against others, and his liberal use of appeals have proved disconcerting and frustrating to many lawyers and judges. But it must be clear the disciplinary system is not a measure of last resort for lawyers and judges who cannot cope with an energetic and innovative practitioner. Only where a lawyer's behavior violates the Code and in so doing has inflicted harm on his client or has been abusive of the rights of other litigants, lawyers, judges or the legal system, should the disciplinary system be resorted to. The great temptation to use the disciplinary system simply out of frustration must be avoided. Only conduct actually amounting to violations should ever merit discipline. *Id.*, at 645.

The Hearing Committee therefore approached the disposition of these charges with a resolve on the one hand that the proceedings not become a weapon against Respondent by frustrated opponents, but instead, that it be exclusively a forum for measurement of his conformity

with the rules of conduct to which all lawyers are bound by law and rule. Having determined violations of the Code occurred, we must now address the level of disciplinary action. *Id.* at 646.

A disciplinary hearing is held to determine the continued fitness of a lawyer to practice law. *In Re: Alker* 157 A.2d 749 (1960). Its purpose is not alone, or even principally, to punish, but rather to insure the present and future protection of others who are entitled to protection. We have examined the totality of Respondent's conduct, as reflected by the evidence in the Record, since isolated instances of misconduct may not warrant severe disciplinary sanction. *Office of Disciplinary Counsel vs. Campbell,* 345 A. 2d 616 (1975). *In Re: Anonymous* No. 43 DB 77 and 43 DB 78, 10 D&C 3rd 637, 645 (1979).

It is, of course, the Hearing Committee's responsibility to judge the credibility of witnesses. *The Office of Disciplinary Counsel v. Lucarini,* 504 PA 271, 275, 472 A.2nd 186, 188 (1983). The Hearing Committee has determined that Respondent's testimony throughout the course of these proceedings has been credible. Indeed, when subject to cross-examination, many of the charges against Respondent crumbled and fell of their own weight. As detailed in our findings, very few of charges against Respondent were eventually proven by clear and convincing evidence. Respondent should not be disciplined on vague concepts such as too aggressive or frustrating personal style or attempting to maximize recovery for his clients.

However, it is equally clear, and demonstrated by clear and convincing evidence, that Respondent did violate the following Disciplinary Rules of the Code of Professional Responsibility:

DR 9-102(B)(4), requiring an attorney to promptly pay or deliver to a client as requested by a client, funds, securities, or other properties in the lawyer's possession which the client is entitled to receive. Respondent violated DR 9-102(B)(4) twice, once in connection with the Hale matter and once in connection with the Corbin matter.

In addition, Respondent violated DR 5-105(B), prohibiting a lawyer from continuing multiple employment if the exercise of his independent professional judgment on behalf of the client, will be or is likely to be adversely effected by his representation of another client, or if it would be likely to involve him in representing different interests. Respondent violated DR 5-105(B) in Corbin.

Finally, after discharge by a client, Respondent violated DR 2-110(B)(4), requiring an attorney representing a client before a tribunal to withdraw from employment and the lawyer representing the client in other matters to withdraw from employment if he is discharged by the client. Clearly, in Woolard and Wiberg, after discharge, Respondent refused to turn over his file and refused to terminate the representation.

Essentially, what the Hearing Committee is left with is an active practitioner, perceived by some to be abrasive and unpleasant, with disciplinary charges brought against him be eight clients. The other side of the coin is many times that number of clients who are satisfied with

Respondent's representation. Indeed, Mr. Hale came back to Respondent with a second case because he was satisfied with his prior representation of him. We have reviewed the Statement of Petitioner offered by the Disciplinary Counsel pursuant to the Disciplinary Rules, Section 89.151(B). Respondent has not been disciplined prior to this time.

Therefore, after reviewing the testimony and submissions of the parties, it is the recommendation of the Hearing Committee that Respondent receive a private reprimand by the Board, with a condition attached. The condition is that, in the future, Respondent must promptly turn over a file after discharge by a client. If Respondent does not promptly turn over a file after discharge, then he will have breached the condition, and the breach of the condition shall be grounds for reconsideration of the discipline imposed in the two Petitions here considered.

/s/ Sally J. Bellet
Sally J. Bellet, Chairperson

/s/ Howard J. Creskoff
Howard J. Creskoff

/s/ Edward G. Bauer,
Edward G. Bauer, Jr.

(SEAL)

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

11th Floor, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 787-5886

August 9, 1990

Allen L. Feingold, Esq.
809 One East Penn Square
Philadelphia, PA 19107

RE: Office of Disciplinary Counsel
v. ALLEN L. FEINGOLD
Nos. 34 DB 86 and 19 DB 87
Attorney Registration No. 03892
(Philadelphia)

Dear Mr. Feingold:

The Disciplinary Board gave consideration to the above proceeding and determined that the matter should

be concluded by a Private Reprimand as provided by Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. A copy of the Order of the Disciplinary Board dated August 9, 1990 is enclosed for your information, together with Opinion of the Disciplinary Board.

You will be notified in advance of the date scheduled for the next executive session of the Board.

For your information, I am enclosing a copy of § 89.205 of the Disciplinary Board Rules and direct your attention specifically to the provisions of paragraph (e) thereof.

Very truly yours,

/s/ Nan M. Cohen
Nan M. Cohen
Secretary

NMC/emb
Enclosures

cc: (with enclosure)
Dennis H. Eisman, Esq., Counsel for Respondent
Deborah A. Cackowski, Chief Disciplinary Counsel
Anthony P. Sodroski, Assistant Disciplinary Counsel
Members of Hearing Committee 1.07
Sally J. Bellet, Esq., Chair
Howard J. Creskoff, Esq.
Edward G. Bauer, Jr., Esq.

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	Nos. 34 DB 86 and 19 DB 87
Petitioner	:	Attorney Registration No. 03892
v.	:	
ALLEN L. FEINGOLD,	:	(Philadelphia)
Respondent	:	

ORDER

AND NOW, this 9th day of August, 1990, upon consideration of the Report and Recommendation of Hearing Committee 1.07 filed March 15, 1990; it is hereby

ORDERED that the said ALLEN L. FEINGOLD of Philadelphia be subjected to PRIVATE REPRIMAND by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs are to be paid by the Respondent.

BY THE BOARD:

/s/ John A. Dumolo
Chairman

TRUE COPY FROM RECORD
Attest:

/s/ Nan M. Cohen
Nan M. Cohen, Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

(SEAL)

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	Nos. 34 DB 86 and 19 DB 87
Petitioner	:	Attorney Registration No. 03892
v.	:	
ALLEN L. FEINGOLD	:	(Philadelphia)
Respondent	:	

OPINION
THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

I. INTRODUCTION

The Office of Disciplinary Counsel filed two separate Petitions for Discipline consisting of eight separate charges and seventy alleged Disciplinary Rule violations. Due to the sheer volume of this matter the Board found it necessary to structure its Report in the following manner:

I. Introduction
II. History of Proceeding
III. Findings of Fact and Discussion of Individual Charges: Each of the eight charges will be analyzed individually with a separate Findings of Fact and Discussion Section for each charge.
IV. General Discussion
V. Conclusions of Law
VI. Determination

II. HISTORY OF PROCEEDINGS

Respondent, born in 1941, was admitted to the practice of law in the Commonwealth of Pennsylvania in 1966.

Respondent maintains his principal office at One East Penn Square, Philadelphia, Pennsylvania.

Office of Disciplinary Counsel filed two separate Petitions for Discipline against Respondent as follows: No. 34 DB 86 consisting of five charges, filed June 18, 1986 and 19 DB 87 involving three charges, filed on March 25, 1987. In the two Petitions for Discipline, Respondent was charged with the following misconduct: Deliberately interfering with and refusing to permit the settlement of his clients' case; routinely using rude and offensive language; behaving aggressively towards his clients and opposing counsel; willfully disobeying court orders; appealing cases without client consent; representing multiple parties without advising his clients of the conflict of interest; failing to promptly pay or deliver to his clients funds or other property as requested; and failing to withdraw from employment when discharged by his client.

The matters were referred to Hearing Committee 1.07 comprised of Sally J. Bellet, Esquire, Chairperson, Howard J. Creskoff, Esquire, and Edward G. Bauer, Esquire.

By Order of the Disciplinary Board dated April 21, 1987, the two petitions were consolidated for hearing. Respondent objected to the joinder of the two petitions and on June 15, 1987 filed an Application for Relief with the Pennsylvania Supreme Court. On June 18, 1987, Petitioner filed a Motion to Quash Respondent's Application. By Order dated September 3, 1987, the Supreme Court of Pennsylvania denied Respondent's Application for Relief.

The hearing in this matter was exhaustive and lengthy. Hearings were held on January 13, 14, 15, 1987;

April 29, 1987; May 3, 4, 10, 23, 1987; January 13, 14, 1988; March 17, 18, 1988; July 21, 1988; and May 23, 1989. The Hearing Committee filed its Report on March 15, 1990 in which the Committee determined that most of the charges were not supported by clear and convincing evidence. The Committee dismissed the unsupported charges and recommended Respondent receive a Private Reprimand with Conditions.

On April 10, 1990, Office of Disciplinary Counsel filed a Brief on Exceptions to the Report of the Hearing Committee. Petitioner took exception to the findings of fact, conclusions of law and the recommended discipline. Petitioner argued that "many relevant and clearly established facts were omitted from the Committee's Report" and "more charges were supported by clear and convincing evidence than found by the Committee." Petitioner also argued that "the Committee's recommended sanction was inappropriate" and urged a "substantial suspension if not disbarment." (Petitioner's Brief on Exceptions pp. 8, 12). Respondent did not file a Brief on Exceptions.

On April 10, 1990, the same day Petitioner filed its Brief, Petitioner also requested a waiver of the page limit on the Brief on Exceptions imposed by Disciplinary Board Rule 89.202(3) (c). (Petitioner's Brief consisted of 134 pages). By Order dated April 19, 1990, the Disciplinary Board granted Petitioner's request. Thereafter, Respondent filed an Application for Reconsideration of the Board's Order with the Supreme Court of Pennsylvania which was denied by Order dated May 21, 1990.

The matter was adjudicated by the full Board at its regularly scheduled meeting held on May 24, 1990.

III. FINDINGS OF FACT AND DISCUSSION OF INDIVIDUAL CHARGES

A. Charge I (34 DB 86) The Gordon Case

1. Findings of Fact

On March 4, 1977, Patricia A. Gordon retained Respondent to represent her in a personal injury claim against the Millards for damages arising from a motor vehicle accident which occurred on February 17, 1977. On April 11, 1978, Respondent filed suit on behalf of his client in the Court of Common Pleas, Montgomery County. (N.T. 1/13/87 p. 17). However, Respondent never filed an uninsured motorist claim on behalf of Ms. Gordon. (N.T. 1/14/87 p. 2, 125). On April 29, 1978, an arbitration award was entered in favor of Ms. Gordon in the amount of $6,500.00. (Exh. P-1). With Ms. Gordon's permission, Respondent appealed the award. (N.T. 1/13/87 p. 135). Before the case went to trial, Respondent reached a settlement with defendant's counsel, George H. Knoell, III, Esquire. The amount of $7,750.00 was to be paid to Ms. Gordon by the Millard's insurance carrier, Harleysville Insurance Company. On June 7, 1983, the settlement agreement was entered on the record before the Honorable William H. Yohn, Jr. (N.T. 1/13/87 p. 18). The defendant's counsel, Mr. Knoell, stated on the record that the case had been settled, the total payment of $7,750.00 would be sent to Respondent accompanied by a request for a general release and an Order to Mark the Matter Settled. Respondent agreed to this proposed method of settlement. (Exh. 2, N.T. 6/7/83 p. 2).

By letter dated June 14, 1983, Mr. Knoell informed Respondent that he would forward the settlement draft to

Respondent upon receipt of an executed General Release and an Order to Settle. (Exh. P-3, N.T. 1/13/87 p. 19). By letters dated June 17 and 24, 1983 to Attorney Knoell, Respondent demanded the settlement check and refused to forward a Release stating that the Release was not necessary since plaintiff accepted the settlement in open court on the record. (Exhs. P-4, P-5; N.T. 1/13/87 pp. 19, 38, 66-67, 109-110). By letter dated June 29, 1983 to Judge Yohn, Attorney Knoell requested the Court's assistance in resolving the issue of Respondent's objection to executing a Release. By letter dated July 1, 1983, Judge Yohn advised Respondent to execute the Release or contact his secretary to schedule a conference to settle the matter. Respondent failed to reply. (Exh. P-7, N.T. 1/13/87 pp. 17, 19). By letter dated July 22, 1983, Attorney Knoell advised Judge Yohn that Respondent failed to contact him since the Court's letter of July 1, 1983 and requested a conference. (N.T. 1/13/87 p. 69). By letter dated July 28, 1983, Judge Yohn again suggested that Respondent comply with the request for an executed Release. Thereafter, as requested by Attorney Knoell, Judge Yohn scheduled a conference for August 9, 1983 at 9:15 a.m. (Exh. P-8, N.T. 1/13/87 pp. 70-73).

By letter dated August 3, 1983 to Judge Yohn, Respondent acknowledged his receipt of notice of the August 9, 1983 conference and stated he would not attend due to a conflict in schedule. Respondent also advised the Court that he refused to provide the Release because Respondent felt that the Montgomery County Court system showed favoritism to Montgomery County attorneys and because the question of the release had not been raised at the time of the settlement on the record. (Exh.

P-10, N.T. 1/13/87 pp. 19, 74-77). By letter dated August 5, 1983, Judge Yohn informed Respondent that the conference would proceed despite Respondent's absence and that his Honor would make an appropriate determination at that time. (Exh. P-12, N.T. 1/13/87 pp. 20, 76-77). By letter dated August 15, 1983, Judge Yohn informed Respondent of what occurred at the conference and requested Respondent to provide him with some valid reason for not wanting to return a signed Release. Respondent failed to reply. (Exh. P-13, N.T. 1/13/87 pp. 20, 79-81).

Ms. Gordon contacted Harleysville Insurance Company in December of 1983 and was allegedly told that her check was sent to Respondent on June 14, 1983. However, Respondent did not have the check. (N.T. 1/13/87 pp. 180, 186-188; 1/14/87 p. 87). Respondent received Ms. Gordon's letter dated February 6, 1984 in which Ms. Gordon requested Respondent to either sign the required papers or inform Harleysville Insurance Company that Respondent no longer represented her. (Exh. P-14). Despite Ms. Gordon's request that Respondent reply before February 11, 1984, Respondent failed to reply. (N.T. 1/13/87 pp. 20, 138-145). By letter dated March 21, 1984, Ms. Gordon wrote to Judge Yohn, copied to Respondent and Attorney Knoell, requesting a conference concerning her case and stating that she was happy with the settlement and would like to sign a Release as soon as possible. (Exh. P-15, N.T. 1/13/87 pp. 81-82, 146-147). A conference was held on April 13, 1984, before Judge Yohn at which Respondent, Attorney Knoell, and Ms. Gordon were present. At the conference, Ms. Gordon signed the General Release. (N.T. 1/13/87 p. 20). On April 17, 1984,

Harleysville Insurance Company reissued a check in the amount of $7,750.00 in settlement of *Gordon v. Millard* and sent it to Mr. Knoell. As agreed upon at the conference, Attorney Knoell delivered the settlement draft to the Court which forwarded it to Respondent who made distribution to Ms. Gordon. (Exhs. P-17A, P-17C; N.T. 1/13/87 p. 21 204). Harleysville Insurance Company received the Release executed by Ms. Gordon after April 18, 1984. (Exh. P-16; N.T. 1/13/87 p. 201). On other occasions, Harleysville Insurance Company had accommodated a settling party with regard to the language of the release. (N.T. 1/13/87 pp. 200-201).

2. Discussion

In the *Gordon* matter the parties entered into a settlement in open court on the record. The agreement established that defense counsel for Harleysville Insurance Company would forward a check to Respondent along with a Release which would be returned to defense counsel. Thereafter, Respondent and counsel for the defense became embroiled in a dispute as to whether the settlement check was to be sent to Respondent before or after Respondent provided a General Release and returned an Order to Mark the Matter Settled. The result was a clash between two strong willed attorneys neither of whom would yield his position. Respondent took the position that since the statute of limitation had run and the settlement agreement was on record in open court, the Release was unnecessary and irrelevant.

Meanwhile, Ms. Gordon contacted Harleysville Insurance Company which allegedly informed Ms. Gordon that her check was sent to Respondent five months

prior. However, Respondent did not have the check. Under the false impression that Respondent had converted her funds, Ms. Gordon reported Respondent to the Disciplinary Board. After consultation with Disciplinary Counsel, Ms. Gordon contacted Judge Yohn who scheduled a conference in order to settle the matter. After the conference, a Release and Order to Mark the Matter Settled was given in exchange for the distribution of funds to Ms. Gordon.

Although Respondent's actions were aggravating, to say the least, by strictly construing the settlement agreement that was placed on the record, such behavior does not constitute a violation of the Disciplinary Rules. The Board concurs in the Hearing Committee's determination to dismiss the charges against Respondent in the *Gordon* matter.

B. Charge II (34 DB 86) The Lit Case

1. Findings of Fact

Sheryl Lit was employed as a paralegal by Respondent's firm from approximately September 22, 1982 through April 15, 1983. On January 5, 1983, Ms. Lit was involved in a motor vehicle accident and sustained minor personal injuries. Shortly afterwards, Ms. Lit signed an agreement retaining Respondent to represent her in a personal injury claim and a claim for Personal Injury Protection ("PIP") benefits arising from the automobile accident. (N.T. 1/13/87 p. 21 256).

At the time of the accident, Ms. Lit lived with her parents and was insured under her parents' insurance

policy with Harleysville Insurance Company (Harleysville). Under the Harleysville policy, Ms. Lit's parents elected to have their health care carrier, Blue Cross/Blue Shield provide primary insurance coverage for medical bills and expenses. (N.T. 1/13/87 pp. 221-222, 227-228). Respondent filed a claim with Harleysville for no-fault benefits and PIP benefits on behalf of Ms. Lit on March 18, 1983 and April 1, 1983 respectively. (N.T. 1/13/87 pp. 21, 220, 223-224). Harleysville made direct payments on behalf of Ms. Lit to health care providers Arrow Medical Equipment and Frankford Mayfair Diagnostic Services. (N.T. 1/13/87 pp. 225, 228 and 239). With the exception of completing an in-office questionnaire form, Ms. Lit did not perform any work on her own file. Specifically, Ms. Lit did not personally complete nor forward any documents to Harleysville concerning her own claim. (N.T. 1/13/87 pp. 256-257).

On April 15, 1983, Ms. Lit's employment with Respondent's law firm terminated. (N.T. 1/13/87 p. 22). Thereafter, on August 13, 1983, Ms. Lit was involved in a second, more severe automobile accident. In early 1985, Ms. Lit retained Milton Sacks, Esquire to represent her interests in both the August, 1983 accident and the January, 1983 accident. (N.T. 1/13/87 pp. 22, 261-262). By letters dated March 1, 1984 and March 9, 1984, Attorney Sacks advised Respondent of Ms. Lit's retention of Attorney Sacks and requested Ms. Lit's salary information in regard to her August 11, 1983 claim. (Exh. P-18, N.T. 1/14/87 at p. 2.58-2.59). On April 5, 1984, Respondent met with Attorney Sacks and provided Attorney Sacks a copy of Ms. Lit's 1983 W-2 form and agreed to provide Ms. Lit's file from her January 1983 accident. (Exh. P-18;

N.T. 1/13/87 p. 22, N.T. 1/14/87 at pp. 2.59-2.60, 2.69). Thereafter, Attorney Sacks telephoned Respondent on several occasions in regard to the Lit file. On each occasion, Attorney Sacks was advised that Respondent was not in the office. (Exh. P-18, N.T. 1/14/87 p. 2.60). In June 1984, Ms. Lit telephoned Respondent's office requesting her file. (N.T. 1/13/87 pp. 262-263). Respondent did not provide the file to Ms. Lit nor Attorney Sacks. (N.T. 1/13/87 p. 263, N.T. 1/14/87 pp. 2.60-2.64). Pursuant to the Pennsylvania No-Fault Insurance Act, the statute of limitations has expired on Ms. Lit's wage loss claim.

2. Discussion

In the *Lit* matter, Respondent represented his employee, Ms. Lit, in regard to her personal injury claim arising from a minor automobile accident. As a result of this accident, Ms. Lit lost two days of work, but Respondent paid her for those days. Thus, Respondent filed only a Claim for medical expenses and not lost wages.

After Ms. Lit's employment with Respondent terminated, she was involved in a second, more severe automobile accident. Ms. Lit retained new counsel, Attorney Sacks, to represent her interests in both accidents. Attorney Sacks requested Respondent to provide Ms. Lit's employment and salary information along with her file. Respondent provided Ms. Lit's W-2 form, but did not provide the Lit file. Respondent's position is that Ms. Lit did not lose any time from work and thus, a loss wage claim in regard to the first accident would be fraudulent. Furthermore, Ms. Lit's medical information could have been easily obtained from Ms. Lit's no-fault insurance

carrier or medical provider. However, Attorney Sacks failed to proceed with Ms. Lit's legitimate claim for medical expenses. Attorney Sacks' failure to proceed can not be attributed to Respondent.

Finding no violations of the Disciplinary Rules, the Board concurs in the Hearing Committee's determination to dismiss the charges against Respondent in the *Lit* matter.

C. Charge III (34 DB 86) The Hale Matter

1. Findings of Fact

While crossing a street on January 30, 1981, Jonathan Hale was struck by an automobile that left the scene of the accident. Neither the owner nor the operator of the vehicle were identified. As a result of the accident, Mr. Hale is now a quadriplegic and is confined to a nursing home. (N.T. 1/13/87 p. 22). On August 27, 1981, Mr. Hale gave power of attorney to his sister, Francis Hayes, so that she may manage Mr. Hale's business affairs. (Exh. P-28; N.T. 11/25/86 pp. 8-9, 23, N.T. 1/14/87 pp. 2.17-2.19, 2.50-2.51). After the accident, Ms. Hayes requested Respondent to see her brother, Mr. Hale, in the hospital. Ms. Hayes was familiar with Respondent due to his representation of Mr. Hale in regard to a prior accident. (N.T. 1/13/87 p. 22). Respondent went to see Mr. Hale in the hospital at which time Mr. Hale retained Respondent to represent him in all claims arising from the hit and run accident. Respondent was aware of Ms. Hayes' power of attorney, but only represented Mr. Hale. (N.T. 1/14/87 pp. 2.4-2.7, 2.19, 2.54).

It is alleged Mr. Hale lived in the Hayes' household and therefore, was covered by Mr. Hayes' insurance policy with State Farm Insurance Company (State Farm). (N.T. 1/13/87 p. 22). Despite the fact the Pennsylvania No-Fault Motor Vehicle Insurance Act was applicable at the time of Mr. Hale's accident and provided for payment of all medical expenses, Respondent did not file a claim for personal injury protection (PIP) benefits on behalf of Mr. Hale. (N.T. 1/13/87 p. 23). Respondent explained his reasons for not doing so as follows: Mr. Hale was content with the treatment he was receiving and the medical bills for Mr. Hale's treatment were being paid for by the Department of Public Welfare (DPW) through Public Assistance or Medical Assistance. If an application was made for PIP benefits, the Department of Public Welfare would become aware of the uninsured motorist claim and DPW could assert a lien against the benefits, leaving Mr. Hale with no cash. (N.T. 1/15/87 pp. 165-168, 237-238). The statute of limitation has expired with respect to Mr. Hale's claim for PIP benefits. (N.T. 1/15/87 pp. 165-168).

On March 23, 1982, Respondent filed a claim with State Farm for uninsured motorist benefits on behalf of his client, Mr. Hale. In August of 1982, Respondent obtained the appointment of arbitrators for the uninsured motorist claim against State Farm. The arbitrators selected to hear this matter were Louis Slawe, Esquire, Grace R. Schyler, Esquire, and Philip M. Gilligan, Esquire, chosen as the neutral arbitrator and chairman of the panel. (N.T. 1/13/87 p. 24).

From August 13, 1982 through June 8, 1984, defendant's counsel, Mr. Dion, Respondent and members of the arbitrator panel engaged in a series of correspondence.

(Exh. P-23 – P-50). Mr. Dion requested Respondent to provide medical bills and a statement from Mr. Hale. Respondent refused to comply with the request and used derogatory language when referring to Mr. Dion. Mr. Dion requested a continuance of the hearing. Respondent opposed the continuance and argued for an immediate hearing, characterizing his client Mr. Hale as a "deathly ill quadriplegic." Thereafter, on April 22, 1983, Mr. Hale's statement was taken and in January of 1984, Respondent provided Mr. Dion some of Mr. Hale's medical records. (Exh. P-4, P-46; N.T. 1/13/87 p. 27; N.T. 1/14/87 p. 2.175; N.T. 1/15/87 p. 170).

On July 13, 1984, Mr. Dion filed a petition in the Court of Common Pleas of Philadelphia seeking to disqualify the arbitration panel. Mr. Dion argued that Respondent's characterization of Mr. Hale, his use of insulting language, and failure to timely produce the requested documents was improper and prejudicial. (Exh. P-51; N.T. 1/14/87 pp. 2.182-2.183). The Court of Common Pleas denied Mr. Dion's petition. (Exh. P-76; N.T. 1/14/87 p. 2.182).

By letter dated July 17, 1984, Mr. Dion made an offer of settlement, on behalf of State Farm, in the amount of the policy limits of $30,000.00, in return for an endorsed general release. (Exh. P-52; N.T. 1/14/87 pp. 2.180-2.181). By letter dated July 20, 1984, Mr. Dion forwarded to Respondent a release and requested Respondent to return it with a letter assuring Mr. Dion that Mr. Hale was aware of the release and that he had not been declared incompetent. Mr. Dion advised that upon receipt of these documents, he would immediately forward the two settlement drafts in the total amount of $30,000.00. (Exh. P-53).

Respondent declined to accept the offer and insisted on the completion of the arbitration hearing in *Hale v. State Farm*. (Exh. P-54 – P-55, N.T. 1/13/87 p. 29). A hearing was held and on August 9, 1984, the arbitrators made a finding in favor of Respondent's client, Mr. Hale, in the amount of $30,000.00. (N.T. 1/13/87 p. 29). On October 9, 1984, Judge Thomas A. White entered an Order confirming the arbitrator's award and ordering Respondent to forward to Mr. Dion an Order to Satisfy Judgment upon receipt of the funds. (Exh. P-59). By letter dated October 12, 1984, Mr. Dion advised Respondent that upon receipt of Respondent's written assurance that he would not appeal Judge White's order Mr. Dion would forward two settlement drafts, in the amount of $15,000.00 each, in return for an Order to Satisfy Judgment. Mr. Dion wrote that in the absence of such written assurance he would forward the drafts after expiration of the 30 day appeal period. (Exh. P-60; N.T. 1/14/87 p. 2.191). Judge White entered an Order dated October 18, 1984 compelling State Farm to pay interest on the $30,000.00 from the date of the award and denying Respondent's motion filed in August 1984 for counsel fees in connection with the Common Pleas Court proceedings. (Exh. P-61; N.T. 1/13/87 p. 30). By letter dated October 25, 1984, Mr. Dion forwarded to Respondent two drafts totaling $30,000.00 and check in the amount of $45.50 representing costs. He advised Respondent that he calculated interest at $180.00, requesting that Respondent advise whether that amount was acceptable, and stated that he would send the $180.00 providing that Respondent forwarded to him an Order to Satisfy Judgment. (Exh. 62; N.T. 1/14/87). Respondent did not provide the Order to Satisfy Judgment nor did he

advise Mr. Dion what amount of interest he believed to be appropriate. (N.T. 1/13/87 p. 30; N.T. 1/14/87 p. 2.195).

Under cover of letter dated October 30, 1984, Respondent forwarded to Mrs. Hayes the two $15,000.00 checks with instructions regarding the method of obtaining Mr. Hale's endorsement. Thereafter, Respondent met with Mrs. Hayes and once again instructed her how he wanted the settlement checks endorsed. (N.T. 1/14/87 pp. 2.09-2.10). On November 8, 1984, Mrs. Hayes obtained the "x" mark of Mr. Hale on the two drafts, signed her name, and had the endorsement witnessed. The next day, Mrs. Hayes went to Respondent's office to return the endorsed drafts. (Exh. P-64; N.T. 1/13/87 p. 30). After reviewing the settlement checks, Respondent began yelling at Mrs. Hayes. He then tore the settlement checks rendering them unnegotiable, and threw them in the trash. According to Respondent, he was angry for the following two reasons: Mrs. Hayes did not obtain the proper endorsement on the checks as instructed; she signed her name above Mr. Hale's "x" mark and one of the checks was improperly dated for 1985 instead of the correct year of 1984. (N.T. 1/14/87 pp. 2.12-2.13, 2.39-2.40; N.T. 1/15/87 pp. 195-196, 242). Respondent retrieved the two damaged checks from the trash, repaired them with tape, and attempted to negotiate the checks at his bank. After the bank refused to accept the checks, Respondent voided each check. (N.T. 1/15/87 pp. 195, 197).

By letter dated November 13, 1984, to Mr. Dion, Respondent returned the damaged drafts and requested that new drafts be issued, explaining that the drafts were "damaged" upon their return from Respondent's client.

(Exh. P-65; N.T. 1/14/87 p. 2.194; N.T. 1/15/87 p. 197). By Order dated January 25, 1985, Judge White ordered Mr. Dion to pay into the Court the two drafts totaling $30,000.00 within five days of the order and ordered Respondent to file an order to satisfy within 15 days of the order, at which time the drafts were to be released. (Exh. P-67; N.T. 1/13/87 pp. 30-31). Mr. Dion forwarded to Judge White two new drafts each in the amount of $15,000.00, but Respondent failed to file the order to satisfy. (Exh. P-68; N.T. 1/13/87 p. 31; N.T. 1/14/87 p. 2.196).

Meanwhile, on January 16, 1985, Mr. Hale placed a telephone call to Respondent with the assistance of his sister, Mrs. Hayes. Due to the fact Respondent was unavailable, Mr. Hale left a message requesting that Respondent call him back. A few weeks later, Mrs. Hayes also left a message requesting Respondent to return her call. Respondent failed to communicate with either Mr. Hale or Mrs. Hayes. (N.T. 1/14/87 pp. 2.14-2.16; N.T. 11/25/86 pp. 11-13). In a letter of inquiry dated May 31, 1985, Respondent was notified that Mr. Hale filed a complaint with the Office of Disciplinary Counsel. (Exh. P-77; N.T. 1/13/87 p. 32). On July 2, 1985, Mrs. Hayes wrote on behalf of her brother, Mr. Hale, requesting the settlement checks and information regarding the settlement. (Exh. P-78; N.T. 1/14/87 p. 2.20). By letter dated July 8, 1985, Respondent advised Mrs. Hayes that because the complaint had been filed against him with the Disciplinary Board, Respondent "will have nothing further to do with her". (Exh. P-79; N.T. 1/13/87 p. 32).

By letter dated August 9, 1985, Mr. Barr, on behalf of State Farm, requested Judge White to enter an order

marking the judgment satisfied in the matter of *Hale v. State Farm*. (Exh. P-165; N.T. 1/15/87 pp. 121-122). On August 14, 1985, Judge White issued a Rule to Show Cause why the matter should not be marked settled and the judgment marked satisfied. (Exh. P-76; N.T. 1/13/87 p. 32). Argument was held before Judge White on October 1, 1985 and by Order dated October 4, 1985, Judge White directed the Prothonotary to mark the judgment against State Farm satisfied. (Exh. P-72; N.T. 1/13/87 p. 32; N.T. 1/15/87 p. 123). On November 21, 1985, Judge White issued an Opinion in support of his Order stating the following:

> " . . . We have had many similar matters in which plaintiff's counsel has frustrated our attempts to resolve matters before us and in effect interfered with the orderly judicial process. We cannot and will not allow this to continue."
>
> "Plaintiff's counsel argued that he had not received the original check representing the Award as his client had torn it up. Since this is about the sixth time this attorney has alleged that different clients have torn up checks, this Court no longer believes this attorney when he makes that argument."

(Exh. P-141; N.T. 1/15/87 pp. 126-127). Respondent filed an appeal of Judge White's Order dated October 4, 1985. On May 28, 1986, the Superior Court denied Respondent's appeal, *per curiam*, and affirmed Judge White's Order marking the case *Hale v. State Farm* satisfied. (Exhs. P-140(a) and (b); N.T. 1/15/87 pp. 128-129). Respondent subsequently petitioned the Superior Court for reargument of the appeal. The Court denied, *per curiam*, the

Application for Reargument on June 30, 1986. (Exhs. P-139(a) and (b); N.T. 1/15/87 pp. 128-129).

Respondent never made any inquiry as to whether State Farm had deposited with the Court the $30,000.00 in checks or the interest. Respondent never advised Mr. Barr or Mr. Dion, on behalf of State Farm, or the Court as to the amount of interest he believed due upon the judgment. (N.T. 1/15/87 pp. 225, 227, 248-249). By letter dated August 12, 1986, four years after Respondent filed the claim with State Farm for uninsured motorist benefits, Mr. Hale discharged Respondent as his attorney. (Exh. P-160; N.T. 1/14/87 pp. 2.20-2.21).

2. Discussion

In the *Hale* matter, an arbitration panel awarded Mr. Hale $30,000.00 which represented the full amount of the insurance coverage. Defendant State Farm forwarded to Respondent two drafts totaling $30,000.00. Respondent tore the checks claiming that one check was erroneously dated and Mrs. Hayes failed to have the checks properly endorsed as instructed. Further litigation followed in the Court of Common Pleas which resulted in an order entered by Judge White compelling State Farm to pay the settlement funds into the Court. State Farm complied with the order and promptly deposited two checks totaling $30,000.00 with the Court. However, Respondent failed to file the order to mark the judgment against State Farm satisfied. Respondent took issue with the amount of interest owed on the delayed payment and the amount of costs due. Thereafter, Judge White directed the Prothonotary to mark the judgment against State Farm satisfied

and Respondent appealed this order. The Superior Court affirmed Judge White's order and denied Respondent's Petition for Reargument.

Respondent worked diligently to strictly enforce the arbitration award and obtain the interest and costs due which Respondent believes Mr. Hale was entitled. It can be reasonably implied that Mr. Hale would have wanted Respondent to vigorously litigate this matter on Mr. Hale's behalf. But, at the same time, it is clear that Mr. Hale also would have wanted the $30,000.00 at the time it became available. Despite the fact State Farm deposited the checks with the Prothonotary, pursuant to court order, Respondent failed to obtain the funds on behalf of his client. In addition, Respondent never advised State Farm or the Court as to the amount of interest he believed was due upon the judgment. Thus, the Board concurs in the Hearing Committee's determination that Respondent's conduct constituted a violation of DR 9-102(B) (4) Which requires an attorney to promptly pay or deliver to a client as requested funds, securities, or other properties in the lawyer's possession which the client is entitled to receive.

The Board also concurs in the Hearing Committee's determination to dismiss all other alleged violations of the Disciplinary Rules in this matter. There is an aura of confusion surrounding the filing of this complaint against Respondent. Respondent represented Mr. Hale in a prior case in which Mr. Hale was involved in an accident. In regard to this first case, Respondent obtained a fair settlement on behalf of Mr. Hale and gave the funds to Mrs. Hayes who was acting on behalf of her brother, Mr. Hale. Mrs. Hayes claimed she put the funds in a Certificate of Deposit at Bell Savings and Loan and informed Mr. Hale

of her actions. (N.T. 1/14/87 pp. 2.32-2.33). However, Mr. Hale testified that he "never got a dime from Mr. Feingold". (N.T. 1/14/87 p. 2.25). Respondent's position is that Mrs. Hayes failed to advise Mr. Hale of the fact Respondent had obtained a fair settlement in the first case and the funds were available to him. Thus, Mr. Hale believed Respondent "stole his money". Misguided, Mr. Hale became angry, discharged Respondent, and eventually filed a complaint with the Disciplinary Board.

D. Charge IV (34 DB 86) The Valentine/Corbin Case

1. Findings of Fact

On June 27, 1978, Russell Valentine, owner and operator of the vehicle and Marcia Corbin, passenger in the vehicle were involved in an automobile accident when their vehicle was struck by an automobile driven by John Gillin. Both Mr. Valentine and Ms. Corbin sustained personal injuries and Mr. Valentine's vehicle was substantially damaged. (N.T. 1/13/87 p. 33). Shortly after the accident, Mr. Valentine and Ms. Corbin retained Respondent to represent them in their claims for personal injuries and property damage arising from the accident. (N.T. 1/13/87 p. 33). Respondent failed to advise Mr. Valentine and Ms. Corbin of the potential conflict of interest that may arise during the course of his representation of both parties. (N.T. 4/29/87 pp. 39, 42, 44-45, 85-87, 89). Respondent filed suit on behalf of both Mr. Valentine and Ms. Corbin against Mr. Gillin in the Court of Common Pleas of Philadelphia County. (N.T. 1/13/87 p. 33). In representing Ms. Corbin, Respondent did not make a

direct claim on behalf of Ms. Corbin against Mr. Valentine. However, defendant, Mr. Gillin, through counsel, joined Mr. Valentine as an additional defendant in regard to the claim of Ms. Corbin. Respondent did not withdraw as counsel for either party after the joinder of Mr. Valentine as an additional defendant in regard to the Corbin matter. (Exh. P-92; N.T. 6/4/87 p. 7; N.T. 6/10/87 pp. 201-202).

Both defendants, Mr. Gillin and Mr. Valentine were insured by State Farm Insurance Company. (State Farm). State Farm retained Frank Jakobowski, Esquire to represent Mr. Gillin and retained Lee H. Rosenau, Esquire to represent Mr. Valentine. In April of 1981, Mr. Rosenau made telephone calls and wrote letters requesting Mr. Valentine to contact him in regard to the lawsuit. (Exhs. P-143, P-144; N.T. 4/29/87 pp. 43-50). Mr. Valentine informed Respondent of Mr. Rosenau's attempts of communication. Respondent advised Mr. Valentine to refer all communication from Mr. Rosenau to Respondent, but failed to advise Mr. Valentine that Mr. Rosenau was the attorney designated by State Farm to represent him as an additional defendant. Respondent also failed to advise Mr. Valentine of his rights and obligations pursuant to the terms of his State Farm policy such as the requirement that Mr. Valentine cooperate with legal counsel chosen to represent him or the company could decline coverage. (N.T. 4/29/87 pp. 43-45, 48-50).

By letter dated April 1, 1981, Respondent informed Mr. Rosenau that Respondent didn't like him, didn't want anything to do with him and objected to Mr. Rosenau's representation of Mr. Valentine. Respondent and Mr.

Rosenau had known each other through their legal practices for years prior to the Valentine case, and their relationship was poor. (Exh. P-83; N.T. 6/3/87 p. 57; N.T. 6/10/87 pp. 202, 208).

On April 2, 1981, Mr. Rosenau filed a Reply to New Matter on behalf of Mr. Valentine. Mr. Rosenau raised the statute of limitations as an affirmative defense, raised a defense pursuant to the No-Fault Motor Vehicle Insurance Act, and denied liability on the part of Mr. Valentine. Mr. Rosenau also signed the affidavit annexed to the Reply to New Matter which states that Mr. Rosenau is the attorney for Mr. Valentine and he was authorized to take the affidavit. (Exh. P-85; N.T. 1/13/87 p. 33; N.T. 6/3/87 pp. 45-48, 100-101). Mr. Rosenau forwarded a copy of the Reply to Respondent and Mr. Jakobowski, counsel to Mr. Gillin. (Exh. P-84). Respondent never advised Mr. Valentine that the pleading filed by Mr. Rosenau was in Mr. Valentine's best interest. (N.T. 4/29/87 p. 49).

Although Respondent admitted he would have filed the same exact pleading, he objected to Mr. Rosenau's filing of the Reply. (N.T. 6/10/87 p. 206). By letters dated April 3, April 13, and April 22, 1981 Respondent advised Mr. Rosenau that Respondent did not agree with some of the assertions that Mr. Rosenau had made in the Reply to New Matter; denied Mr. Rosenau had Mr. Valentine's authorization to sign the affidavit; and requested Mr. Rosenau to withdraw the Reply. (Exhs. P-86, P-87, P-89; N.T. 6/13/87 pp. 51-53; N.T. 6/10/87 p. 208). By letter dated April 16 and 25 of 1981, Mr. Rosenau advised Respondent that he believed his representation of Mr. Valentine was proper and welcomed the opportunity to meet with Respondent and Mr. Valentine. (Exhs. P-88,

P-90; N.T. 6/3/87 pp. 52, 59). By letter dated April 25, 1981, copied to Respondent, Mr. Rosenau requested Mr. Valentine to contact him for an appointment to discuss the case. (Exh. 144; N.T. 6/3/87 pp. 59-60). By letter dated May 8, 1981 to Mr. Valentine, copied to Respondent, Mr. Rosenau confirmed the telephone conversation of May 7, 1981 in which Mr. Valentine indicated he would check with Respondent to arrange for an appointment

Subsequently, Respondent and Mr. Valentine failed to respond to Mr. Rosenau's communication and thus, no meeting was ever scheduled. (Exh. P-145; N.T. 6/3/87 pp. 60-61). Mr. Rosenau did not withdraw the Reply to New Matter that he had filed on behalf of Mr. Valentine. (N.T. 6/3/87 pp. 58-59). Thereafter, Respondent prepared a document which would prevent Mr. Rosenau from further contacting Mr. Valentine. Pursuant to Respondent's advice, Mr. Valentine signed the document. (Exh. P-102; N.T. 4/29/87 pp. 69-70).

In October of 1982, Respondent served a Request for Production of Documents upon Mr. Rosenau. Mr. Rosenau responded by producing all materials he believed were "discoverable". Mr. Rosenau was willing to share with Respondent the report in the State Farm file that indicated Mr. Valentine had run a red light, but did not want to disclose this information to counsel for Mr. Gillin through an answer to a discovery request. (N.T. 6/3/87 pp. 61-66). By letters dated October 11, 1982 and October 18, 1982, Respondent demanded Mr. Rosenau to supplement his answer to the Request for Production of Documents or Respondent would file a Motion for Sanctions. (Exhs. P-146, P-148; N.T. 6/3/87 pp. 61, 64-65). Mr. Rosenau responded by letters dated October 15, 1982 and

October 21, 1982 in which Mr. Rosenau advised Respondent that he had produced all discoverable materials in his possession and he would check again with State Farm. He also offered Respondent to review the relevant portions of his file and invited Respondent to contact him to discuss the matter further. (Exhs. P-147, P-149; N.T. 6/3/87 pp. 63-67). Respondent never contacted Mr. Rosenau to review the contents of the files as offered. (N.T. 6/3/87 p. 67). By letter dated November 18, 1983, Mr. Rosenau wrote to Nicholas Siciliano, Court Administrator, copied to Mr. Jakobowski and Respondent, requesting the *Valentine and Corbin v. Gillin* be listed for a settlement conference. (Exh. P-152). By letter dated November 21, 1983, Respondent requested that Mr. Siciliano not "waste my time" in scheduling a settlement conference. As a result, a settlement conference was not scheduled. (Exh. P-153; N.T. 6/3/87 pp. 73-74; N.T. 6/4/87 pp. 9-10).

On April 4, 1984, Petitioner sent Respondent a letter of inquiry concerning Respondent's representation of Mr. Valentine and Ms. Corbin. (N.T. 1/13/87 p. 33). Thereafter, Respondent advised Mr. Valentine that he would not continue in his representation. Mr. Valentine wrote to Respondent and asked Respondent to either continue working on his case or formally withdraw. Eventually, Respondent continued to represent Mr. Valentine. (Exh. P-93; N.T. 1/13/87 p. 34; N.T. 4/29/87 pp. 61-63).

In April of 1984, Respondent left Mr. Valentine and Ms. Corbin at his office for several hours while he attended a settlement conference concerning their case before Judge Lord. Without discussing a settlement amount with his clients, Respondent negotiated a settlement with State Farm on behalf of both Mr. Valentine and

Ms. Corbin. Ms. Corbin was to receive a total amount of $6,000.00 for her claim, with $1,000.00 to be paid through Mr. Valentine's insurance policy and $5,000.00 to be paid through Mr. Gillin's insurance policy. Mr. Valentine's case settled for $9,000.00. When Respondent returned from the settlement conference he advised Mr. Valentine that his case had settled for $9,000.00 and Ms. Corbin's had settled for $5,000.00, but failed to advise Mr. Valentine that his insurance policy was contributing toward the settlement of Ms. Corbin's claim. (N.T. 1/13/87 p. 34; N.T. 4/29/87 pp. 55-58, 93-95). On April 23, 1984, the case *Valentine and Corbin v. Gillin* was marked settled by Order of Judge Charles Lord. (Exh. P-138; N.T. 1/13/87 p. 34). On the same day, after the case was marked settled, Respondent requested additional money from defendant's counsel for Mr. Valentine's property damage claim. Mr. Jakobowski conveyed an offer of $350.00. (N.T. 6/4/87 p. 13). Also on the same day, State Farm issued a draft in the amount of $9,350.00 in full settlement of Mr. Valentine's claim. (Exh. P-155).

Thereafter, Mr. Valentine advised Respondent orally, later confirmed by letter dated May 15, 1984, that he was dissatisfied with the settlement amount of his claim and requested Respondent to reopen settlement negotiations on his behalf. (Exh. P-93; N.T. 1/13/87 p. 34). By letter dated April 30, 1984, Respondent informed Judge Lord that Mr. Valentine was dissatisfied with the amount offered for settlement and requested a settlement conference be scheduled in regard to the matter. (Exh. P-94; N.T. 1/13/87 p. 34, N.T. 6/3/87 pp. 242-245). By letter dated May 2, 1984, Judge Lord declined to schedule a conference and suggested the attorneys settle the matter or

Respondent file with the court whatever motions he deemed appropriate to reopen the matter on the record. (Exh. P-95; N.T. 1/13/87). After Mr. Valentine received a copy of Judge Lord's letter, Mr. Valentine met with Respondent on approximately six occasions and reviewed the facts of the case. Subsequent to these review sessions, Mr. Valentine contacted Respondent by telephone and inquired as to the status of his case. On these occasions, Respondent would ask Mr. Valentine who the lawyer was and then provide Mr. Valentine with no further information. (N.T. 4/29/87 pp. 64-65). Respondent took no further steps to renegotiate or resolve the claims of Mr. Valentine nor did he file any motion to reopen the matter with the Court. (N.T. 6/4/87 pp. 14-16).

By letter dated October 22, 1984, Albert Burg, a Claim Superintendent at State Farm requested Respondent to process the $9,350.00 draft in regard to the settlement of the Valentine matter. (Exh. P-155). By letter dated October 23, 1984, Respondent replied to Mr. Burg's letter stating the following: The case was not settled; he did not receive any checks; he would "never deal with Mr. Jakobowski again"; and later that week he intended to file a Motion to Set Aside the "alleged settlement". (Exh. P-156). Subsequent to his letter, Respondent took no further action to reopen the matter. (N.T. 6/4/87 p. 16; N.T. 6/3/87 p. 251).

In February 1986, Mr. Valentine contacted Mr. Jakobowski inquiring as to the status of the settlement. Mr. Jakobowski suggested that Mr. Valentine speak to Respondent. (N.T. 6/4/87 p. 16). By letter dated February 20, 1986, Mr. Valentine informed Respondent that he believed Respondent was in possession of a settlement check and requested Respondent's response within ten

days. (Exh. P-100). Respondent denied receipt of the State Farm check and requested Mr. Valentine to identify his source and contact him immediately. (Exh. P-101). By letter dated March 13 1986, Mr. Valentine discharged Respondent as his counsel. (Exh. P-168). Mr. Valentine retained new counsel, George Martin, Esquire, who had resolved Mr. Valentine's claims with State Farm. (N.T. 4/29/87 pp. 68, 74-80; N.T. 6/4/87 pp. 17-18).

By letter dated May 24, 1984, James D. Palmer, Esquire ("Mr. Palmer"), an associate of Mr. Rosenau's, wrote to Respondent stating that while there was a delay in the settlement of Mr. Valentine's claims, the settlement agreement for Ms. Corbin was still in effect and could be concluded. (Exh. P-96; N.T. 6/3/87 pp. 247-249). On several occasions Mr. Palmer discussed with Respondent the prospect of settling only Ms. Corbin's claim. On each occasion, Respondent informed Mr. Palmer that there was nothing to be done about Ms. Corbin's case as it was Respondent's intention to set aside the entire settlement. (N.T. 6/3/87 pp. 250-251; N.T. 7/3/87 pp. 250-251). Mr. Palmer had in his possession a settlement draft in the amount of $1,000.00 payable to Marcia Corbin and Respondent for which Mr. Palmer provided Respondent a release to be executed by Ms. Corbin. (Exhs. P-96, P-154; N.T. 6/3/87 pp. 245-246). Respondent never provided Ms. Corbin the release which was available for her signature in May of 1984. (N.T. 4/29/87 pp. 95-100). By letter dated December 13, 1985, Ms. Corbin requested information as to the status of her case and informed Respondent that she believed he was in possession of her settlement check. (Exh. P-99). Respondent failed to reply and never discussed with Ms. Corbin the conclusion of her case.

Marcia Corbin has not received any funds in regard to the settlement of her claim. (N.T. 4/29/87 p. 100).

3. Discussion

In the *Valentine/Corbin* matter, Respondent represented both Mr. Valentine and Ms. Corbin in their claims for personal injuries and property damage arising from an automobile accident. Despite the potential conflict of interest, Respondent filed suit on behalf of both Mr. Valentine and Ms. Corbin. But, Respondent failed to make a direct claim against Mr. Valentine on behalf of Ms. Corbin. Even after the defendant, Mr. Gillin, joined Mr. Valentine as an additional defendant in regard to the Corbin claim, Respondent did not withdraw as counsel for either party.

Thereafter, Respondent negotiated a settlement on behalf of both Mr. Valentine and Ms. Corbin. After the case was marked settled by Judge Lord, Mr. Valentine advised Respondent that he was not satisfied with his settlement. On the other hand, Ms. Corbin clearly agreed to the settlement amount of her claim. The only reason Ms. Corbin did not receive the settlement funds she was entitled to was because of the problems Respondent encountered with the Valentine settlement. Respondent's dispute with Mr. Valentine should not have affected Ms. Corbin's claim. Clearly, a conflict of interest existed and Respondent had a duty to either conclude Ms. Corbin's settlement or advise her to obtain alternative counsel. Respondent failed to take any action to resolve this conflict.

The Board concurs in the Hearing Committee's determination that Respondent's conduct constituted a violation of DR 5-105(B) which prohibits a lawyer from continuing multiple employment if the exercise of his independent professional judgment on behalf of that client will be adversely affected by his representation of another client.

E. Charge V (34 DB 86) The Washington Case

1. Findings of Fact

On July 28, 1978, Gerald Washington sustained injuries while a passenger in the vehicle owned and operated by Carl Richardson. Shortly after the accident, Mr. Washington retained Respondent to represent him in his claim against Mr. Richardson for personal injuries and his claim for benefits under the Pennsylvania Motor Vehicle No-Fault Insurance Act. (N.T. 1/13/87 p. 34, N.T. 6/10/87 p. 115). Respondent initiated suit on behalf of Mr. Washington against Mr. Richardson who was insured by State Farm Insurance Company. (N.T. 1/13/87 p. 34, N.T. 6/10/87 pp. 115, 119-120). On June 25, 1981, an arbitration hearing was held in the Richardson suit at which Mr. Schaible appeared on behalf of State Farm and Mr. Nerenberg, an associate of Respondent appeared on behalf of Mr. Washington. (N.T. 6/10/87 p. 55). At the hearing, State Farm conceded liability and the only issue to be determined by the arbitration panel was an assessment of Mr. Washington's damages. (N.T. 6/10/87 p. 56). However, Mr. Washington did not testify at the hearing because Mr. Nerenberg instructed him to leave the hearing. According to Respondent, Mr. Nerenberg informed

the arbitrators that Judge Cody had allowed the arbitration to be continued, that he was only prepared to take the deposition of Dr. Auday, a treating physician, and he would not proceed with the hearing. (N.T. 6/4/87 p. 153, N.T. 6/23/87 p. 31). The arbitrators entered an award in favor of Mr. Richardson, the defendant. (Exh. P-106). Respondent was able to schedule a new arbitration hearing for Mr. Washington by obtaining an order dated July 20, 1981 from Judge Doty vacating the prior award. On June 17, 1982, at the second hearing, the arbitrators entered an award in favor of defendant, Mr. Richardson, because Mr. Washington's medical bills excluding physical therapy did not meet the $750.00 monetary threshold. (N.T. 1/13/87 p. 35). On June 25, 1982, Respondent appealed this award. (Exh. P-108).

Under cover of letter dated March 19, 1984, Mr. Schaible served upon Respondent Supplemental Interrogatories seeking to update the prior Answers regarding Mr. Washington's treatment, treating physicians and wage loss. Respondent failed to file Answers to the Supplemental Interrogatories and as a result Mr. Schaible filed a Motion for Sanctions on May 25, 1984. Respondent filed a response to the Motion for Sanctions stating that the requested information was redundant and he had previously supplied the information. The court never ruled on this matter. (N.T. 1/13/87 p. 35).

On June 20, 1984, the matter went to trial before Judge Prattis. During the first day of trial, Mr. Washington was on the stand testifying when the trial was adjourned for the day. (N.T. 1/13/87 p. 35). After the adjournment, Mr. Washington returned with Respondent to Respondent's office. Present at Respondent's office was

a physician who had not treated nor examined Mr. Washington. Respondent advised Mr. Washington that the physician would be testifying as an expert witness based on Mr. Washington's records. (N.T. 6/4/87 pp. 124-127, N.T. 6/23/87 pp. 32-40). Mr. Washington walked out of Respondent's office and failed to appear at the trial the next day. (N.T. 6/4/87 p. 128). According to Mr. Washington he refused to appear at the trial because Respondent tried to persuade him to falsely testify that he was treated by this physician. (N.T. 6/4/87 p. 127). Respondent claims Mr. Washington did not appear at trial to conclude his testimony because Mr. Washington was afraid to be cross-examined on his prior criminal and work records. (N.T. 6/4/87 p. 147).

On June 21, 1984, a settlement conference was held before Judge Prattis. At the conference, Respondent negotiated a settlement in the amount of $7,500.00. (N.T. 1/13/87 p. 36). By letter dated June 21, 1984, Respondent informed Mr. Washington of the following: Mr. Washington failed to cooperate; Respondent accepted an offer of $7,500.00, otherwise Mr. Washington would have received nothing; and further communication will be conducted by mail. (N.T. 6/4/87 pp. 129-130).

Respondent also brought suit on behalf of Mr. Washington for no-fault benefits. (N.T. 1/13/87 p. 36). On October 4, 1982, an arbitration hearing was held in regard to the No-Fault Suit in which the panel awarded Mr. Washington $8,000.00. (Exh. P-116). Under cover of letter dated November 15, 1982, Frederick Smith, Esquire, counsel for State Farm, forwarded to Respondent a settlement draft in the amount of $8,000.00 payable to Mr.

Washington. Mr. Smith also requested Respondent to forward an executed Order to Satisfy. (Exhs. P-117, P-118). There was a delay in forwarding this settlement draft to Respondent because State Farm erroneously made the first draft payable to the defendant, Mr. Richardson, instead of Mr. Washington. (N.T. 6/10/87 pp. 119-120). On November 17, 1982, Respondent filed a Writ of Execution against State Farm in the No-Fault Suit alleging State Farm's failure to timely pay the award. (N.T. 1/13/87 p. 36). On December 3, 1982, State Farm filed a Petition to Dissolve the Writ of Execution which was granted by order of Judge Theodore White on February 17, 1983. (N.T. 1/13/87 p. 36).

By letter dated March 17, 1983, hand-delivered to Respondent, Mr. Smith tendered a draft in the amount of $124.99 representing the interest and costs which had accrued on the $8,000.00 award. (Exh. P-120). By letter dated March 30, 1983, delivered to Judge White, Respondent complained that Mr. Smith had assessed the interest due on the award at an incorrect rate. (Exh. P-121). However, Respondent never advised Mr. Smith as to the amount of interest he believed appropriate. (N.T. 6/10/87 pp. 133-134).

By letter dated August 30, 1984, Mr. Schaible advised Respondent that two drafts, one in the amount of $8,000.00 representing the No-Fault Settlement and another in the amount of $7,500.00 representing the Richardson Case Settlement, would be hand-delivered to Respondent's office upon receipt of the two executed Orders to Settle. (Exh. P-125). Respondent refused to provide the Orders to Settle before receipt of the drafts. By letter dated November 26, 1984, Mr. Schaible

requested the court's assistance to conclude the matter. (Exh. P-126). On December 12, 1984, Judge Prattis issued two orders, one in the Richardson suit and the other in the No-Fault Suit, directing that the two cases be marked as settled, discontinued and ended, with prejudice, upon the record. (Exh. P-127, P-128). Under cover of letter dated December 14, 1984, Mr. Schaible forwarded to Respondent the two settlement drafts. (Exh. P-131).

On January 14, 1985, Respondent filed an appeal from Judge Prattis' order dated December 12, 1984 as it pertained to the No-Fault Suit. (Exh. P-130). By order and opinion dated June 10, 1986, the Superior Court remanded the case for further proceedings on the issue of the contested settlement. (Exh. P-135). On March 24, 1986, a hearing was held before Judge Prattis at which Respondent and State Farm agreed to settle the matter upon payment of an additional $500.00 by State Farm. (N.T. 1/13/87 p. 37). On March 25, 1986, Respondent filed an Order to Satisfy in the No-Fault Suit. (Exh. P-136).

Meanwhile, Mr. Washington wrote to Respondent by letter dated February 8, 1985 inquiring why he had not received disbursement of the settlement of funds. (Exh. P-131). By letter dated February 11, 1985, Respondent requested Mr. Washington to make an appointment with Respondent in order to endorse the drafts. Despite the fact Respondent received the settlement drafts in December of 1984, Respondent advised Mr. Washington that he had just received them. (Exh. P-132, N.T. 6/4/87 pp. 133-134). In March of 1985, Mr. Washington endorsed the settlement draft and subsequently received a disbursement of the settlement funds in the amount of $7,088.99. (N.T. 1/13/87 p. 37). By letter dated March 26, 1985, Mr.

Washington requested Respondent to provide him with a copy of the contingent fee agreement, a statement of distribution, copies of documents signed by Mr. Washington, and also requested to be advised whether Respondent deducted any fees from the $8,000.00 No-Fault draft. Although this letter was sent by certified mail and received by Respondent's office on March 27, 1985, Respondent failed to respond. (Exh. P-137, N.T. 6/4/87 pp. 138-140). Respondent still has in his possession a $500.00 check representing attorney fees and costs and a check for approximately $500.00 representing the additional interest awarded to Mr. Washington. (N.T. 6/23/87 p. 48).

2. Discussion

The charge in the *Washington* Case arose from Mr. Washington's accusations that Respondent asked Mr. Washington to testify falsely during a trial and Respondent failed to timely distribute to Mr. Washington settlement funds. After the first day of the trial, Mr. Washington returned with Respondent to Respondent's office where Respondent introduced Mr. Washington to a physician who had not treated nor examined Mr. Washington. According to Mr. Washington, Respondent wanted him to falsely testify that he was treated by this physician. Mr. Washington claims that it was for this reason that he walked out of Respondent's office and failed to appear at the second day of trial. Respondent claims that he advised Mr. Washington that the physician would only testify as an expert witness based on Mr. Washington's records. Respondent further testified that the reason Mr. Washington failed to appear at the trial to

conclude his testimony was because Mr. Washington was afraid to be cross-examined on his prior criminal and work records. Mr. Washington was involved in domestic quarrels which included physically abusing his wife and being arrested for beating his brother-in-law. (N.T. 6/4/87 pp. 145, 163). During his employment at Breyers Ice Cream, Mr. Washington often argued with his supervisor and was constantly warned for insubordination. Mr. Washington also admitted; "I was getting ready to beat [a co-worker] because he jumped in my face." (N.T. 6/4/87 pp. 162-163). After he was fired from Philadelphia Gas Works, Mr. Washington removed a bypass from his property so that he may receive gas into his home free of charge. (N.T. 6/4/87 p. 164). The Hearing Committee found Respondent's testimony to be credible and the Board concurs in this determination.

Despite Mr. Washington's failure to appear at the trial to conclude his testimony, Respondent managed to settle the case on his client's behalf in the amount of $7,500.00. Distribution of the settlement funds was made difficult by the fact Respondent and Mr. Washington were involved in a dispute which included the exchange of threats. Respondent was angry with Mr. Washington for his failure to cooperate. Mr. Washington reciprocated the anger because Respondent yelled at Mr. Washington in the presence of Mrs. Washington. (N.T. 6/4/87 p. 193). Respondent attempted to distribute the funds and told Mr. Washington to meet him in his office on Sunday. Mr. Washington failed to meet Respondent at the appointed time because he did not trust Respondent as indicated by the following statement made by Mr. Washington: "Like I say, my mom and everything else told me they thought

that you was up to something. I'm not a fool, Mr. Feingold. That wasn't even a business day. A businessman don't do no business on a Sunday." (N.T. 6/4/87 pp. 187-188). In March of 1985, Mr. Washington received his share of the settlement funds.

The Board concurs in the Hearing Committee's determination that the allegations made against Respondent were not proven by clear and convincing evidence. Thus the charges in the *Washington* Case are dismissed.

F. Charge I (19 DB 87) The Woolard Case

1. Findings of Fact

On November 17, 1980, Jerry Woolard was injured in an automobile accident in which Mr. Woolard's vehicle collided with a vehicle owned and operated by Furman Burton. Respondent was retained to represent Mr. Woolard in his claim for personal injury and property damage and Mrs. Woolard's derivative claim for the loss of consortium. Mr. Woolard executed a contingent fee agreement with Respondent. (Exh. P-1, N.T. 3/17/8 [sic] pp. 227-231). On October 27, 1982, Respondent filed suit in the Court of Common Pleas in Philadelphia on behalf of Mr. & Mrs. Woolard in the matter captioned *Jerry Woolard and Ruth Woolard v. Furman Burton*. (Exh. P-3).

On March 14, 1981, Mrs. Woolard sustained personal injuries in a separate automobile accident occurring in Delaware County. Mrs. Woolard's vehicle collided with a vehicle operated by Martin D. Maloney. The Woolards retained Respondent to represent them in all claims arising from Mrs. Woolard's accident. On January 21, 1983,

Respondent filed suit in the Court of Common Pleas of Delaware County in the matter captioned *Ruth Woolard and Jerry Woolard v. Martin D. Maloney*. (Exhs. P-4 P-19, P-24; N.T. 3/17/88 pp. 238-240).

Mr. Woolard advised Respondent that he was dissatisfied with Respondent's attitude and did not appreciate the manner in which Respondent treated Mr. Woolard. Mr. Woolard found Respondent's bad temper offensive, particularly Respondent's habit of yelling at Mr. Woolard during the course of his representation. Respondent advised Mr. Woolard that if he was dissatisfied with Respondent's representation, Mr. Woolard should retain other counsel. (N.T. 3/17/88 pp. 234, 242). In July of 1983, both Mr. & Mrs. Woolard discharged Respondent and retained Fincourt Shelton, Esquire to undertake representation of the matter previously handled by Respondent. At the time Respondent was discharged he had already finished most of the legal work in the *Woolard v. Maloney* case.

By letter dated August 1, 1983, Mr. Shelton requested Respondent to file a withdrawal of appearance in the matter of *Woolard v. Maloney* and *Woolard v. Burton* so that Mr. Shelton could enter his appearance as counsel in these matters. (Exh. P-6). By letter dated September 26 1983, Mr. Shelton requested Respondent to contact him in regard to the transfer of the two Woolard files. Mr. Shelton also offered to protect Respondent's lien or other interests in the files. (Exh. P-12). Mr. Shelton made a visit to Respondent's office requesting the release of the files, but Respondent advised Mr. Shelton that he would not relinquish the files. (N.T. 3/18/88 p. 163). Respondent admits Mr. Shelton asked him on numerous occasions to

relinquish the Woolard's files and withdraw his appearance, but Respondent refused to do so explaining that Mr. Shelton was not "counsel of record." (N.T. 7/21/88 pp. 5-8).

In the interim, Mr. Carney, counsel for defendant, Martin Maloney, wrote a letter dated September 15, 1987 addressed to the Honorable Rita E. Prescott requesting the court to issue orders directing Respondent to comply with discovery requests and to produce his client for deposition. (Exh. P-10). On September 28, 1983, Respondent agreed to the scheduling of Mrs. Woolard's deposition for October, but failed to advise Mr. Carney that he had been discharged from further representation of the Woolards. (Exhs. P-13, P-14; N.T. 3/17/88 pp. 207-213).

On September 30, 1983, Mr. Shelton informed Mr. Carney that Mr. Shelton was assuming the representation of Mr. & Mrs. Woolard, he wanted to review the file and he would be present with Mrs. Woolard at her deposition scheduled for October 21, 1983. (Exh. P-15, N.T. 3/17/88 pp. 211-212, N.T. 3/18/88 pp. 163-165). Mr. Shelton attempted to reconstruct Mrs. Woolard's file by contacting doctors to obtain records and by reviewing Mr. Carney's file and the court file. (N.T. 3/18/88 pp. 164-165).

By letter dated October 21, 1983, addressed to Respondent and copied to Mr. Shelton, Mr. Carney tendered an offer of settlement in *Woolard v. Maloney* in the amount of $19,500.00. (Exh. P-17, N.T. 3/17/88 pp. 212-214). By letter dated October 21, 1983, Respondent confirmed the receipt of Mr. Carney's settlement offer and the scheduled time for Mrs. Woolard's deposition. Respondent also informed Mr. Carney that he had not

been in contact with Mrs. Woolard for several weeks and she had hung up the telephone on Respondent's associate. (Exh. P-16).

On October 21, 1983, Mr. Carney took the deposition of Mrs. Woolard who was represented by Mr. Shelton. (N.T. 3/17/88 pp. 209-210, N.T. 3/18/88 p. 166). By letter dated October 24, 1983, addressed to Mr. Shelton, Mr. Carney made an offer of settlement of Mrs. Woolard's case in the amount of $21,000.00. (Exh. P-18). Mr. & Mrs. Woolard accepted the settlement offer of $21,000.00 in settlement of *Woolard v. Maloney* and signed a general release in favor of Martin Maloney and Nationwide Insurance. (Exh. P-19, N.T. 3/17/88 pp. 216-219, N.T. 3/18/88 p. 174). Mr. Carney forwarded a $6,000.00 check to Respondent in payment of his fee and a $15,000.00 check to Mr. Shelton on behalf of the Woolards. (N.T. 3/17/88 pp. 217-219).

In the interim, Respondent filed a Petition for Distribution in the matter of *Woolard v. Maloney* seeking attorney's fees representing 50% of the $19,500.00 settlement offer plus costs. (Exh. P-21). On October 31, 1983, Mr. Shelton filed a petition seeking leave of court to enter his appearance in the matter of *Woolard v. Maloney* and the withdrawal of Respondent's appearance in the matter. (Exh. P-20, N.T. 3/18/88 pp. 169-171). On November 10, 1983, Respondent filed an answer to Mr. Shelton's petition to enter appearance, but failed to withdraw his own appearance in the matter. (Exhs. P-4, P-23; N.T. 3/18/88 p. 171). On November 28, 1983, a hearing was held before Judge Prescott at which Respondent agreed to accept the sum of $6,000.00 as payment in full for his fees and costs in the matter of *Woolard v. Maloney*. Respondent further

agreed as a condition of the settlement that he would withdraw his appearance as counsel for Mr. Woolard in the *Woolard v. Burton* matter pending in Philadelphia County. Mr. Shelton agreed to pay Respondent a one-third referral fee plus costs from any recovery received in *Woolard v. Burton*. (Exh. P-24, N.T. 3/18/88 pp. 172-173, N.T. 7/21/88 pp. 9-11).

On November 14, 1983, Mr. Shelton entered his appearance on behalf of the Woolards in the matter captioned *Woolard v. Burton* (Exh. P-29). By letter dated November 18, 1983, Mr. Shelton forwarded a copy of his appearance to Respondent and requested Respondent to withdraw his appearance. Mr. Shelton also requested Respondent to release the Woolard's file to him and offered to pay any costs incurred in the file upon receipt. (Exh. P-28, N.T. 3/18/88 p. 176). Pursuant to a petition filed by Mr. Shelton, a Rule was entered returnable on March 27, 1984 before the Honorable Alfred J. DiBona for Respondent to show cause why he should not enter his withdrawal of appearance in the *Woolard v. Burton* matter. (Exhs. P-30, P-31, P-32; N.T. 3/18/88 p. 176). On March 12, 1984, Respondent filed an Answer to the Petition in which he stated that he had no objection to signing a withdrawal of appearance if Mr. Shelton would only send him one. (Exhs. P-33, P-34; N.T. 3/18/88 p. 176). On March 27, 1984, the date the Rule to Show Cause was due, Respondent filed a Petition for the recusal of Judge DiBona in the matter of *Feingold v. Skipwith* a caption consolidating four separate cases, including *Woolard v. Burton*. (Exhs. P-35, P-36, P-37; N.T. 3/18/88 p. 176). By Order and Opinion dated June 12, 1984, the Honorable Louis G. Hill dismissed Respondent's Petition for Recusal

of Judge DiBona finding no basis for Respondent's allegations of prejudice against him by Judge DiBona. (Exh. P-37).

On December 14, 1984, Judge DiBona entered an Order granting Mr. Shelton's Petition seeking Respondent's withdrawal and directing Mr. Shelton to pay Respondent a one-third referral fee plus costs from any recovery received in *Woolard v. Burton*. (Exhs. P-41, P-42). On September 6, 1985, the Superior Court reversed the Order of Judge DiBona and remanded the matter for further proceedings finding it was error for the trial court to rely upon the disposition of another case, in another county where the record in the Court of Common Pleas of Philadelphia did not establish the terms and conditions of the Delaware County case. (Exhs. P-47 and P-48). The matter was remanded to the Court of Common Pleas of Philadelphia and was assigned to the Honorable Berel Caesar for further proceedings consistent with the Order of the Superior Court. (N.T. 3/18/88 pp. 188-189, 194-195; N.T. 7/21/88 p. 11). In November of 1985, a conference was held before Judge Caesar at which Respondent agreed to accept the terms of the agreement made in Delaware County in which Respondent would withdraw his appearance, relinquish the file to Mr. Shelton, send Mr. Shelton a statement of his costs, and receive a one-third fee plus his costs. (N.T. 3/18/88 p. 197). Respondent failed to forward to Mr. Shelton a statement of his costs as agreed and never relinquished the file in the *Woolard v. Burton* matter. (N.T. 3/18/88 pp. 186-187).

2. Discussion

Petitioner has demonstrated by clear and convincing evidence that Respondent was discharged by the Woolards. Notwithstanding the discharge, Respondent continued to represent the Woolards, did not send new counsel his withdrawal of appearance and did not promptly turn over the files. Although Respondent completed most of the legal work in the Woolard matter at the time he was discharged, Respondent had a duty to withdraw his appearance and turn over the files to Mr. Shelton. Respondent had remedies to protect his economic interests other than refusing to retain his clients files after discharge. Thus, the Board concurs in the Hearing Committee's determination that Respondent's conduct constituted a violation of DR 2-110(B)(4).

G. Charge II (19 B 87) The Wiberg Matter

1. Findings of Fact

In May of 1978, Catherine and Byron Wiberg were involved in a motor vehicle accident. In June of 1978, the Wibergs retained Respondent to represent them in all claims arising from the accident. (Exhs. P-109, P-110, P-111; N.T. 1/14/88 pp. 3-5, 7-8, N.T. 3/17/88 pp. 90-96). Respondent commenced suit on behalf of the Wibergs in the Court of Common Pleas of Bucks County in the matter of *Wiberg v. Williamson*. (Exh. P-111). Respondent engaged in settlement negotiation on behalf of the Wibergs with William MacMinn, Esquire a member of the firm retained to represent defendant Williamson. (Exh. P-119).

By letter dated November 25, 1981, Mr. MacMinn confirmed the settlement of the case for a total of $10,000.00; forwarded two releases to be executed by Respondent's client and Praecipe to Settle, Discontinue and End the matter; and advised Respondent that he would forward the settlement drafts upon his receipt of the signed release and Praecipe. (Exhs. P-119, P-121, P-122, P-125; N.T. 3/17/88 pp. 86-87). In December of 1981, Respondent forwarded the executed release and advised Mr. MacMinn that he would return the Praecipe to Settle upon Respondent's receipt of the checks. (Exh. P-119; N.T. 3/17/88 pp. 86-87). Thereafter, Mr. MacMinn forwarded two settlement drafts to Respondent who returned the executed Order to Settle, Discontinue and End the matter. (Exhs. P-120, P-123, P-124, P-125; N.T. 3/17/88 pp. 86-87). Respondent distributed a total of $4,000.00 to Mr. & Mrs. Wiberg in settlement of the claims and withheld $6,000.00 for medical bills which were not covered by the insurance. (N.T. 1/14/88 pp. 10-12).

Mr. & Mrs. Wiberg informed Respondent that they believed they were covered by an automobile insurance policy issued by Safeguard Mutual Insurance Company. (Exh. P-130, N.T. 1/14/88 p. 12, N.T. 3/18/88 pp. 7-11, 86-87). By letter dated June 5, 1978, Respondent filed a claim with Safeguard for Personal Injury Protection ("PIP") benefits on behalf of the Wibergs. (Exh. P-130). By letter dated June 12, 1978, Safeguard denied coverage of the Wiberg's claim for PIP benefits claiming that the insurance policy had been cancelled prior to the May 21, 1978 accident. In September of 1980, Respondent commenced suit on behalf of the Wibergs against Safeguard for PIP benefits. (Exhs. P-130, P-140). In October of 1984,

an arbitration hearing was held in the matter of *Wiberg v. Safeguard* at which Respondent and the Wibergs chose not to appear. (N.T. 3/18/88 pp. 32-36). At the request of counsel for Safeguard, the arbitrators entered an award in favor of the Wibergs for the amount of the medical bills only. (Exh. P-141, N.T. 3/18/88 pp. 32-36). Respondent filed an appeal from the award of arbitrators on November 9, 1984. (Exh. P-141, N.T. 3/18/88 pp. 34-35).

In the interim, on January 23, 1984, Respondent filed an uninsured motorist claim on behalf of Mr. & Mrs. Wiberg. (Exh. P-127). On August 24, 1984, Respondent filed a Petition to appoint a Neutral Arbitrator and Compel Arbitration in the Court of Common Pleas of Philadelphia in the matter of *Wiberg v. PIGA*. (Exhs. P-127, P-140). By filing this petition, Respondent represented to the Court that Mr. & Mrs. Wiberg were injured by the action of an unknown or uninsured motorist and thus, were entitled to make a claim for uninsured motorist benefits under their personal insurance policy. (Exh. P-127, N.T. 3/18/88 pp. 143-145). Safeguard through PIGA filed a Reply to the Petition denying that the Wibergs were insured by Safeguard on the date of the accident. (Exh. P-168, N.T. 3/18/88 pp. 9-10).

By Order dated November 20, 1984, the Honorable Thomas A. White denied Respondent's Petition to Appoint a Neutral Arbitrator in the uninsured motorist matter. (Exhs. P-140, P-170). On December 17, 1984, Respondent filed a Petition for Reconsideration of Judge White's Order and a few days later Judge White vacated his prior order pending response from PIGA. (Exhs. P-171, P-172). On January 4, 1984, PIGA filed its Answer to Respondent's Petition for Reconsideration, and again

denied that the Wibergs were covered by a Safeguard insurance policy at the time of the accident. (Exh. P-173). By Order dated January 21, 1985, Judge White ordered that depositions be taken to determine whether or not a contract of insurance existed between the parties at the time of the accident on May 21, 1978.

On February 13, 1985, James K. Brengle, Esquire, counsel for PIGA, took the deposition of Catherine Wiberg. At the deposition, Mrs. Wiberg was asked whether she had specifically requested the insurance agent to obtain automobile insurance for the Wibergs through Safeguard. (Exh. P-130, N.T. 3/18/88 pp. 18-21). Mrs. Wiberg testified that she could not remember what had been said to the agent when she and her husband went to review their insurance policy. (Exh. P-130 at p. 32-32A). Upon Mrs. Wiberg's response, Respondent became angry because he had spent approximately nine hours reviewing the facts with Mrs. Wiberg, including the fact that she had paid the agent for the purchase of Safeguard insurance. (N.T. 3/18/88 p. 115). Respondent threw a case file in Mrs. Wiberg's direction, but did not hit her. (N.T. 3/18/88 pp. 20-22, 115-119; N.T. 1/14/88 p. 18). Respondent also told Mrs. Wiberg, in a loud voice, in the presence of Mr. Brengle and the court reporter that Mrs. Wiberg should get out and that she was stupid. When Mrs. Wiberg left, he slammed the door behind her. (N.T. 1/14/88 pp. 18-19, 102-105; N.T. 3/18/88 pp. 20-22). The deposition of Mrs. Wiberg was never filed with the court. (N.T. 3/18/88 p. 22). On April 4, 1985, Judge White issued an Order deeming it admitted that no contract of insurance existed between the Wibergs and Safeguard on the date of the accident, May 21, 1978.

On April 15, 1985. Respondent sent a letter and Notice of Deposition to Mr. Brengle seeking the deposition of employees of Royal Underwriters, Inc. Mr. Brengle, on behalf of Safeguard, sought a Protective Order from Respondent's attempt to depose the employee's of Royal Underwriters, Inc. stating the *Wilberg [sic] v. PIGA* matter was dismissed. (Exhs. P-178, P-179; N.T. 3/18/38 pp. 24-29). By Order dated April 30, 1985, Judge White ordered a hearing to be held to determine whether Respondent still represented Mr. & Mrs. Wiberg. Judge White also vacated his Order of April 4, 1985 in which he had previously deemed admitted that no insurance contract existed between the Wibergs and Safeguard. (Exh. P-184, N.T. 3/18/88 p. 29). At the hearing held before Judge White on June 26, 1985, Mr. Brengle advised the court that Respondent had stated that he no longer represented Mrs. Wiberg. (N.T. 3/18/88 pp. 29-30). By Order dated July 2, 1985, Judge White directed both Mr. & Mrs. Wiberg to submit affidavits to the Court stating whom they chose to represent them in the *Wiberg v. PIGA* matter. (Exh. P-185, N.T. 3/18/88 pp. 31-32).

By letter dated July 18, 1985, Respondent wrote to Mr. & Mrs. Wiberg at their respective addresses requesting that each sign an enclosed affidavit agreeing to Respondent's continued representation. Respondent also stated that if they did not return the endorsed affidavits by July 22, 1985, he would sue them for seven years of attorney fees and costs. (Exh. P-131; N.T. 1/14/88 p. 19, N.T. 3/17/88 pp. 116-117). Mr. & Mrs. Wiberg declined to sign the affidavits prepared by Respondent and retained the services of Michael P. Kelly, Esquire in any remaining claims arising from the May 21,

1978 accident. (N.T. 1/14/88 pp. 19-20, N.T. 3/17/88 pp. 16-120, 158-162). On July 23, 1985 and August 8, 1985, Catherine Wiberg and Byron Wiberg signed an affidavit indicating that they each discharged Respondent and had retained Mr. Kelly to represent them in their remaining claims. These affidavits were submitted to the court, Respondent, and opposing counsel. (Exhs. P-133, P-134, P-135, P-186, P-187; N.T. 3/17/88 pp. 159-163, 118-119).

Between July 1985 and November 1985, Mr. Kelly contacted Respondent on several occasions in an attempt to learn the status of the outstanding claims and to obtain the Wiberg's files. (Exhs. P-133, P-134, P-134, P-137, P-138, P-139). By letters dated October 11, 1985 and November 15, 1985, Mr. Kelly requested Respondent to provide an accounting of the personal injury proceeds being held in escrow on behalf of Mr. & Mrs. Wiberg. (Exhs. P-138, P-139). Respondent failed to release any portion of the Wiberg files and never advised Mr. Kelly whether he was holding monies in escrow on behalf of Mr. & Mrs. Wiberg. (N.T. 3/17/88 pp. 166-168).

In January of 1986, Mr. Kelly resolved Mr. & Mrs. Wiberg's PIP claims in the amount of $1,400.00 representing the amount of the outstanding medical bills only. (N.T. 3/17/88 pp. 172-173).

3. Discussion

In the *Wiberg* matter, Petitioner charges Respondent with engaging in dishonest conduct in regard to the filing of the uninsured motorist claim on behalf of Mr. & Mrs. Wiberg. The Board concurs in the Hearing Committee's determination that the Petitioner did not prove by clear

and convincing evidence that the uninsured motorist claim was improper. Questions were raised by Safeguard as to whether the Wibergs purchased an insurance policy from Safeguard and whether a third, unidentified, vehicle was involved in the Wiberg accident. Respondent's position is that these questions raised by Safeguard are questions of fact which should be determined by a panel of arbitrators. For purposes of this disciplinary proceeding the Board agrees.

The second charge against Respondent involves the incident which occurred at the depositions of Mrs. Wiberg. Respondent spent approximately nine hours reviewing the facts with Mrs. Wiberg, including the fact that she had purchased a Safeguard insurance policy. At the deposition, Mrs. Wiberg testified that she could not remember what she and her husband had said to the agent. Respondent became upset, lost his temper, and threw the file which hit the wall near Mrs. Wiberg. Although the Board in no way condones Respondent's actions, the Board does not believe that an attorney losing his temper in a situation such as the one described is a violation of the Disciplinary Rules of the Code of Professional Responsibility.

Along with the Hearing Committee, the Board is also troubled that Respondent may not have properly accounted for the escrowed funds held for the Wiberg's unpaid medical expenses. However, Petitioner did not meet its burden to prove by clear and convincing evidence that a proper accounting was not rendered or that Respondent failed to make the appropriate payments.

Finally, the Board concurs in the Hearing Committee's determination that Respondent's conduct constituted a violation of DR 2-110(B)(4) which requires an attorney to withdraw from representation upon discharge by his clients. It is clear that Mr. & Mrs. Wiberg discharged Respondent and retained Mr. Michael Kelly to assume representation. Respondent failed to withdraw from representation and failed to release to Mr. Kelly the Wiberg file.

H. Charge III (19 DB 87) The Gallagher Matter

1. Findings of Fact

On November 10, 1979, Joan R. Gallagher and her son, Mark Gallagher, were involved in an automobile accident with a vehicle owned and operated by Carl Johnson. After the accident, Mr. Johnson fled the scene and was involved in a police chase. (Exh. 69, N.T. 1/13/88 pp. 19-20). At all times relevant to the accident, the Gallaghers were insured under a policy from Allstate Insurance Company and Mr. Johnson was insured by Ohio Casualty Insurance Company. (Exhs. P-70 P-71, P-78, P-79, P-81, P-108, P-127). Several weeks after the accident, the Gallaghers retained Respondent to represent them in their claims arising from the accident. (N.T. 1/13/88 pp. 23-24, 64-65).

On December 7, 1979, Ohio Casualty's claims adjuster, Carl Conway, contacted Respondent by telephone and advised him that Ohio Casualty conceded the negligence of its insured, Mr. Johnson, and believed the case could be settled. During the conversation with Mr. Conway,

Respondent stated that he would not deal with any insurance adjuster in the state of Pennsylvania, he was fed up with insurance companies, he would place the Gallagher matter in suit within six months, and Mr. Conway was not to call Respondent again. (Exhs. P-72, P-107; N.T. 1/13/88 pp. 171-712, 176-178).

On November 30, 1979, Respondent made a property damage claim with Allstate and submitted an estimate for repairs of the Gallagher vehicle in the amount of $3,086.00. Allstate paid appoximately $3,500.00 to Mr. Gallagher for the damage to his vehicle and Ohio Casualty reimbursed Allstate. (Exhs. P-70, P-79; N.T. 1/13/88 pp. 75, 87-88, 197-198).

In December of 1979, Respondent filed a claim with Allstate on behalf of the Gallaghers. (Exhs. P-71, P-108, P-161, P-162). By letter dated December 18, 1979, Mr. Holmes, a casualty claims adjuster for Allstate, advised Respondent that Mr. Johnson was covered by an insurance policy with Ohio Casualty and provided Respondent with the policy number and the name of the Ohio Casualty claims adjuster handling the matter. (Exhs. P-71, P-108; N.T. 1/13/88 p. 90). Mr. Holmes also advised that the Gallagher's claims for PIP benefits were subject to a Coordination of Benefits provision in their policy which included the Gallagher's coverage by their Blue Cross and Blue Shield health insurance policy. (Exhs. P-161, P-162; N.T. 1/13/88 pp. 77, 106-111).

In November of 1981, Respondent filed suit on behalf of the Gallaghers and against Carl Johnson in the Court of Common Pleas in Philadelphia. (Exh. P-65). Respondent filed an affidavit of service in *Gallagher v. Johnson*,

but Mr. Johnson failed to turn the pleadings over to Ohio Casualty. On December 21, 1982, Respondent obtained a default judgment against Mr. Johnson. Mr. Johnson failed to notify Ohio Casualty of the judgment. In fact, the claims adjuster from Ohio Casualty handling the claims against Mr. Johnson was not aware of the lawsuit, *Gallagher v. Johnson* until the disciplinary hearing. (N.T. 1/13/88 pp. 199-200). Respondent took no further action in the *Gallagher v. Johnson* matter, nor did he take any steps to enforce the default judgment entered against Mr. Johnson. (Exh. P-65).

From December 21, 1982 through January 17, 1983, Respondent and Mr. Fasset, a general claims representative for Allstate, exchanged a series of letters in regard to the Gallagher's claim for uninsured motorist benefits. Respondent notified Allstate of his representation of the Gallaghers, advised Allstate that he was filing an uninsured motorist claim on behalf of the Gallaghers and requested Allstate to select an arbitrator for an uninsured motorist arbitration. Respondent did not address the issue of Mr. Johnson's insurance covrage [sic] by Ohio Casualty. (Exhs. P-75, P-77, P-80, P-82; N.T. 3/17/88 pp. 14-22). Mr. Fassett advised Respondent that Mr. Johnson was insured by Ohio Casualty, informed him that Mr. Chapman was the Ohio Casualty adjuster handling the matter, requested Respondent to state the basis for making the uninsured motorist claim, and finally referred Respondent to Daniel Carter, Esquire, counsel for Allstate. (Exhs. P-76, P-78, P-81, P-83; N.T. 3/17/88 pp. 14-15, 19-23).

On February 24, 1983, Respondent filed a Petition to Appoint Neutral Arbitrator and Compel Arbitration in

the Court of Common Pleas of Philadelphia. (Exh. P-66, P-85). Allstate refused to designate its arbitrator, thus the court appointed an arbitrator on behalf of Allstate in the *Gallagher v. Johnson* matter. (Exh. P-66, N.T. 1/14/88 pp. 34-35). On May 11, 1983, an arbitration hearing was held in regard to the claim for uninsured mortorist benefits. (Exh. P-66). The arbitration panel entered an award in favor of the Gallaghers in the amount of $10,500.00. (Exhs. P-66, P-87, P-88; N.T. 1/14/88 pp. 39-40). On May 24, 1983, Respondent filed a Petition to Confirm the Arbitration Award. (Exhs. P-66, P-87). On June 13, 1983, Mr. Carter filed a Petition to Vacate the Arbitration Award alleging that Respondent testified fraudulently at the hearing in regard to his knowledge concerning Mr. Johnson's insurance coverage. (Exh. P-87). On June 21, 1983, the Honorable Thomas A. White entered an Order confirming the Award of Arbitration. (Exhs. P-66. P-89). On June 28, 1983, Mr. Carter filed a Petition to Reconsider and Vacate Award of Arbitrators based upon the insured status of Mr. Johnson and Respondent's knowledge of such. (Exh. P-66, P-89). On July 7, 1983, Judge White vacated his order confirming the Award of Arbitrators and on September 14, 1983 entered an Order directing that depositions be taken on the issue of whether or not Carl Johnson was insured by a policy of insurance issued by Ohio Casualty at the time of the accident. (Exh. P-66). Respondent filed a petition requesting the court to reconsider the Order of September 14, 1983. Respondent's petition was denied. On November 10, 1983, pursuant to Judge White's Order, the depositions of Marvin Fassett of Allstate and Carl Conway of Ohio Casualty were taken. In their depositions, Mr. Fassett and Mr. Conway testified

as to the numerous occasions Respondent was advised of Carl Johnson's insurance coverage through Ohio Casualty. (Exhs. P-107, P-108).

On March 7, 1984, Judge White issued an Order denying Respondent's Petition to Confirm the Award of Arbitrators and granting Allstate's Petition to Vacate the Award of Arbitrators. (Exh. P-66, N.T. 1/14/88 pp. 44-45). On March 12, 1984, Respondent filed a Notice of Appeal to the Superior Court from Judge White's March 7, 1984 Order. (Exhs. P-66, P-67). On April 23, 1984, Judge White filed an opinion in support of his Order dated March 7, 1984 finding, *inter alia*, "fraud, misconduct, corruption or other irregularity" in violation of 42 Pa. C.S.A. Section 7341 on the part of Respondent for his failure to disclose the fact defendant had insurance coverage despite his knowledge of such. (Exh. P-96). On December 21, 1984, the Superior Court affirmed Judge White's March 7, 1984 Order and supporting opinion. (Exhs. P-67, P-98, P-99). On January 3, 1985, Respondent filed a Motion for Reargument which was denied by the Superior Court on February 14, 1985. (Exhs. P-67, P-99, P-100). On March 18, 1985, Respondent filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania from the Superior Court's Orders of December 21, 1984 and February 14, 1985. (Exh. P-68). By Order dated August 12, 1985, the Supreme Court denied the Petition for Allowance of Appeal. (Exhs. P-68, P-101). On August 27, 1985, Respondent filed a Petition for Reconsideration with the Supreme Court and on September 6, 1985, Respondent filed a Supplemental Petition for Reconsideration with the Supreme Court. (Exhs. P-68, P-102, P-103, P-104,

P-105). By Order dated October 18, 1985, the Pennsylvania Supreme Court *per curiam*, denied both the Petition for Reconsideration and Supplemental Petition for Reconsideration. (Exhs. P-68, P-106). Respondent pursued his appeals claiming that the Arbitration Award was supported by the evidence at the hearing and thus should not have been vacated by the trial court. (Exhs. P-68, P-106).

Mark Rosen, a physical therapist who treated Mrs. Gallagher for injuries resulting from the accident, submitted his bill to Allstate in the amount of $540.00. (Exh. P-90, N.T. 1/14/88 pp. 89-90, 94-95). On June 2, 1980, Allstate issued a draft in the amount of $540.00 in partial settlement of Mrs. Gallagher's PIP benefits. (Exh. P-91). Respondent failed to make payment to Mr. Rosen. (N.T. 1/14/88 pp. 91-93). Mr. Rosen contacted the Gallaghers by telephone in early 1983 and by letter dated August 3, 1983 requesting payment. (Exhs. P-86, P-90, P-95). Respondent advised Mr. Rosen that the Gallagher family disputes his bill and warned Mr. Rosen to stop harassing the Gallaghers. (Exh. P-94). Although the Gallaghers changed their minds and directed Respondent to make payment to Mr. Rosen, the bill remained unpaid. (N.T. 1/13/88 pp. 72-73).

Thereafter, Credit Protection Service notified the Gallaghers of another unpaid bill for services rendered by Dr. Harris. (Exh. P-92). Mr. Gallagher paid the $125.00 bill with a personal check in order to avoid contact with Respondent. Mr. Gallagher testified that he found Respondent obnoxious and resented Respondent yelling at him. (Exh. P-93, N.T. 1/14/88 pp. 75-77).

On September 29, 1982, Respondent initiated suit on behalf of the Gallaghers and against Allstate for non-payment of PIP/No-Fault benefits in the matter of *Gallagher v. Allstate* in the Court of Common Pleas of Philadelphia. (Exh. P-164). In November of 1982, Respondent filed a Praecipe and obtained a default judgment against Allstate in the PIP/No-Fault matter alleging Allstate's failure to timely respond to the Complaint. (Exh. P-164). Allstate filed an Answer and also a Petition to Open the Default Judgment. (N.T. 1/14/88 p. 111). On January 12, 1983, Judge Doty entered an order granting Allstate's Petition to Open Default Judgment. (Exh. P-164). On January 17, 1983, Respondent filed an appeal to the Superior Court from Judge Doty's order. On December 3, 1986, the Superior Court reversed and remanded the PIP/No-Fault matter to the trial court with directives to take depositions. (Exh. P-164, N.T. 1/14/88 pp. 111-112).

From October 1, 1986 through March of 1987, Mr. Marsh, counsel to Allstate and Mr. Meckert, a senior claim representative from Allstate, exchanged letters with Respondent in regard to the PIP/No-Fault matter. Allstate requested Respondent to provide Allstate with a complete breakdown of the outstanding medical bills and Respondent's costs and fees so that a settlement offer could be made. (Exhs. P-151, P-153; N.T. 1/13/88 pp. 110-113, N.T. 1/14/88 pp. 111-114). Respondent in turn advised Allstate to pay the outstanding medical bills plus interest before he would advise them of the amount of his ever-increasing attorney's fees. (Exhs. P-150, P-152, P-154; N.T. 1/13/88 pp. 110-111, N.T. 1/14/88 pp. 111-113, 120-122).

In March of 1987, in an attempt to settle the matter, Mr. Marsh wrote to Respondent detailing the amount of Allstate's proposed settlement, including interest, attorney's fees and costs. (Exhs. P-142, P-160; N.T. 1/13/88 pp. 108-114, N.T. 1/14/88 pp. 115-118). Respondent failed to respond. By letter dated March 26, 1987, Mr. Marsh requested Judge Doty to schedule a settlement conference in the PIP/No-Fault matter. Respondent refused to attend the settlement conference scheduled by Judge Doty because Respondent believed, since Allstate was involved, it would be a waste of time. Respondent advised Mr. Marsh and Judge Doty that he would rather litigate the matter. (Exhs. P-143, P-144, P-148; N.T. 1/14/88 pp. 115-117). The PIP/No Fault matter is currently waiting to be listed for trial. (N.T. 1/14/88 p. 118).

2. Discussion

In the *Gallagher* matter, Petitioner charged Respondent With filing a fraudulent uninsured motorist claim with Allstate Insurance Company on behalf of the Gallaghers. It is not disputed that defendant, Carl Johnson was insured by Ohio Casualty Insurance Company at the time of the accident. However, Mr. Johnson failed to cooperate with Ohio Casualty after the accident occurred. Mr. Johnson failed to turn the pleading over to Ohio Casualty after he was served notice of the complaint; he did not file an answer to the complaint; and failed to notify Ohio Causualty [sic] that a default judgment was entered against him. Representatives of Ohio Casualty conceded at the disciplinary hearing that Johnson's conduct after the accident was such that Ohio Casualty would have considered Johnson's activities a breach of

his contract of insurance and would have refused to indemnify or defend him in this matter. In other words, Ohio Casualty would have disclaimed. Disclaimer, of course, renders Johnson uninsured, giving rise to a proper uninsured motorist claim by the Gallaghers under their own insurance policy with Allstate.

Therefore, the Board concurs in the Hearing Committee's determination that the filing of an uninsured motorist claim under these circumstances did not violate the Disciplinary Rules.

Petitioner also produced evidence that Mr. Rosen, a physical therapist who treated Mrs. Gallagher, was not paid. Respondent's position was that Mr. Rosen was not paid because Mr. Rosen inflated the number of visits, inflated the charges, and failed to cooperate in the processing of the Gallagher claim. For these reasons, Respondent, with the agreement of the Gallaghers, did not pay Mr. Rosen's bill. Respondent's decision not to pay Mr. Rosen's bill is based on a legitimate dispute. The Board concurs in the Hearing Committee's opinion that Mr. Rosen has other methods of collection available to him and the disciplinary system should not be used as a bill collector. Therefore, Respondent's failure to pay Mr. Rosen is not a violation of the Disciplinary Rules.

Finally, Petitioner charges Respondent with interfering with the administration of justice by insisting on the litigation of the Allstate no-fault claim. Although Allstate may, at this time, be willing to pay the medical bills submitted, there is still the outstanding issue of counsel fees and interest. Disciplinary counsel has not proved, by clear and convincing evidence, that Respondent was

unreasonable by pursuing this claim. Also the issue whether the medical treatment and bills were reasonable and necessary should be left to the trier of fact. If it is found that Allstate improperly refused to pay medical expenses, the Respondent may litigate the value of the legal services incurred in prosecution of the no-fault claim against Allstate. The Board concurs in the Hearing Committee's determination that Respondent did not violate the Disciplinary Rules in regard to his handling of the no-fault claim.

Finding no Disciplinary Rule violations, the charges in the *Gallagher* matter are dismissed.

IV. GENERAL DISCUSSION

Before the Board is an attorney who is an active practitioner perceived by some to be abrasive and unpleasant and against whom eight separate charges have been brought. Having determined that Respondent's conduct constitutes a violation of the Disciplinary Rules of the Code of Professional Responsibility, the Board must address the issue of the appropriate discipline to be imposed.

It is incumbent upon Disciplinary Counsel to prove these charges by clear and convincing evidence. *Philadelphia Newspapers, Inc. v. Disciplinary Board*, 468 Pa. 382. 363 A.2d 779 (1976); *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 506 A 2d 872, 875 (1986). To meet this burden of proof by clear and convincing evidence, Disciplinary Counsel must present evidence that is so clear, direct, weighty and convincing as to enable the fact finder to come to a clear conviction without hesitancy of the truth

of the precise facts in issue. *In Re Shivers*, 363 Pa. Super 225, 525 A.2d 801 (1987). As detailed in the above findings of fact and discussion, few of the charges against Respondent were proven by clear and convincing evidence. In fact, many of the charges against Respondent failed to stand the rigor of cross-examination. Also, the Hearing Committee found Respondent's testimony to be credible throughout the proceeding. Although the Board conducts its review of attorney disciplinary cases *de novo*, the Board is guided by the Hearing Committee findings with respect to the issue of credibility. *See, Office of Disciplinary Counsel v. Lucarini*, 504 Pa. 271, 275, 472 A.2d 186, 188 (1983); *Office of Disciplinary Counsel v. Walker*, 469 Pa. 432, 366 A.2d 563, 568 (1976).

In the future, charges should be brought only when there is a reasonable likelihood that there is clear and convincing evidence to prove such charges. The mere fact that Respondent does not enjoy universal popularity is not a basis for bringing charges. Respondent should not be disciplined on vague concepts such as too aggressive or frustrating personal style or attempting to maximize recovery for his clients. To allow disciplinary proceedings in connection with allegations that an attorney is "too aggressive" or "not polite" will result in a chilling effect on advocacy, administration of justice and due process.

It is clear that an attorney who does not fit in the conventional mold and who maintains a large and active practice by himself with minimum staff, filing motions, pleadings, petitions, briefs and other tools of his profession in great profusion and utilizing unorthodox methods, will not be subject to discipline merely for his liberal use of appeals and frustrating personal style. Only

conduct actually amounting to a violation of the Disciplinary Rules should merit discipline. *In Re Anonymous*, No. 43 DB 77 and 43 DB 78, 10 D&C 3rd 637, 645 (1979). Thus, Respondent should only be disciplined for the following violations of the Disciplinary Rules of the Code of Professional Responsibility as determined by the Hearing Committee and concurred in by this Board: DR 2-110(B)(4), DR 5-105(B) and DR 9-102(B)(4).

The primary purpose of the disciplinary system is not to punish the attorney, but rather to protect the public from unfit attorneys, to maintain the integrity of the legal system, and to preserve the confidence of the public in the legal profession and the judicial system. *Office of Disciplinary Counsel v. Stern*, 526 A.2d 1180, 1186 (Pa. 1987). Upon examination of the totality of Respondent's conduct, as reflected by the evidence in record, including the fact Respondent has not been subject to any prior disciplinary proceeding, the Board believes Respondent's continued practice of law will not adversely affect the integrity of the legal system nor destroy the confidence of the public in the legal profession. Thus, public discipline in this matter is not warranted.

V. CONCLUSIONS OF LAW

A. Charge I (34 DB 86) The Gordon Case

The Board concurs in the Hearing Committee's determination to dismiss Charge I (34 DB 86). Respondent did not violate the following Disciplinary Rules:

1. DR 1-102(A) (5) – which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice;

2. DR 1-102(A) (6) – which prohibits an attorney from engaging in other conduct which adversely reflects on fitness to practice law;

3. DR 6 101(A) (3) – which prohibits an attorney from neglecting a legal matter entrusted to him;

4. DR 7-101(A) (1) – which prohibits an attorney from intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and Disciplinary Rules; and

5. DR 7-102(A) (1) – which prohibits an attorney from filing a suit, asserting a position, conducting a defense, delaying a trial, or taking other action on behalf of a client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

B. Charge II (34 DB 86) The Lit Case

The Board concurs in the Hearing Committee's determination to dismiss Charge II (34 DB 86). Respondent did not violate the following Disciplinary Rules:

1. DR 2-110(A) (2) – which prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of the client.

2. DR 2-110(B) (4) – which requires an attorney representing a client before a tribunal to withdraw from employment and a lawyer representing a client in other matters to withdraw from employment if he is discharged by the client; and

3. DR 9-102(B) (4) – which requires an attorney to promptly pay or deliver to a client

as requested by the client funds, securities, or other properties in the lawyer's possession which the client is entitled to receive.

C. Charge III (34 DB 86) The Hale Case

The Board concurs in the Hearing Committee's determination that Respondent violated the following Disciplinary Rules.

1. DR 9-102(B) (4) – which requires an attorney to promptly pay or deliver to a client as requested by the client funds, securities, or other properties in the lawyer's possession which the client is entitled to receive.

The Board also supports the Hearing Committee's conclusion that Respondent did not violate the following Disciplinary Rules:

2. DR 1-102(A) (4) – which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;

3. DR 1-102(A) (5) – which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice;

4. DR 1-102(A) (6) – which prohibits an attorney from engaging in other conduct which adversely reflects on fitness to practice law;

5. DR 7-101(A) (1) – which prohibits an attorney from intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and Disciplinary Rules; and

6. DR 7-101(A) (3) – which prohibits an attorney from intentionally prejudicing or damaging a client during the course of the professional relationship;

7. DR 7-102(A) (1) – which prohibits an attorney from filing a suit, asserting a position, conducting a defense, delaying a trial, or taking other action on behalf of a client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

8. DR 7-102(A) (5) – which prohibits an attorney during his representation of a client from knowingly making a false statement of law or fact; and

D. Charge IV (34 DB 86) The Valentine/Corbin Case

The Board concurs in the Hearing Committee's determination that Respondent violated the following Disciplinary Rules:

1. DR 5-105(B) – which prohibits a lawyer from continuing multiple employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests;

The Board also supports the Hearing Committee's conclusion that Respondent did not violate the following Disciplinary Rules:

2. DR 1-102(A) (5) – which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice;

3. DR 1-102(A) (6) – which prohibits an attorney from engaging in other conduct which adversely reflects on fitness to practice law;
4. DR 5-105(A) – which requires a lawyer to decline proffered employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests;
5. DR 7-101(A) (1) – which prohibits an attorney from intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and Disciplinary Rules; and
6. DR 7-101(A) (3) – which prohibits an attorney from intentionally prejudicing or damaging a client during the course of the professional relationship.

E. Charge V (34 B 86) The Washington Case

The Board concurs in the Hearing Committee's determination to dismiss Charge V (34 DB 86). Respondent did not violate the following Disciplinary Rules:

1. DR 1-102(A) (4) – which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;
2. DR 1-102(A) (5) – which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice;
3. DR 1-102(A) (6) – which prohibits an attorney from engaging in other conduct which adversely reflects on fitness to practice law;

4. DR 7-102(A) (1) – which prohibits an attorney from filing a suit, asserting a position, conducting a defense, delaying a trial, or taking other action on behalf of a client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

5. DR 7-102(A) (4) – which prohibits an attorney from knowingly using perjured testimony or false evidence;

6. DR 7-102(A) (7) – which prohibits an attorney from counseling or assisting the client in conduct that the attorney knows to be illegal or fraudulent;

7. DR 9-102(A) – which requires that all funds of clients paid to an attorney, except for advances for costs and expenses, be kept in identifiable bank accounts in the state in which the attorney's office is located and that no funds belonging to the attorney shall be deposited therein except for funds sufficient to pay bank charges and funds belonging in part to the client and in part to the attorney;

8. DR 9-102(B) (1) – which requires an attorney to promptly notify a client of the receipt of the client's funds, securities or other properties;

9. DR 9-102(B) (3) – Which requires an attorney to maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and to render appropriate accounts to the client regarding them; and

10. DR 9-102(B) (4) – Which requires an attorney to promptly pay or deliver to a client as requested by the client funds, securities,

or other properties in the lawyer's possession which the client is entitled to receive.

F. Charge I (19 DB 87) The Woolard Case

The Board concurs in the Hearing Committee's determination that Respondent violated the following Disciplinary Rules:

1. DR 2-110(B) (4) – which requires an attorney representing a client before a tribunal to withdraw from employment and a lawyer representing a client in other matters to withdraw from employment if he is discharged by the client.

The Board also supports the Hearing Committee's conclusion that Respondent did not violate the following Disciplinary Rules:

2. DR 1-102(A) (4) – Which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;

3. DR 1-102(A) (5) – which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice;

4. DR 1-102(A) (6) – which prohibits an attorney from engaging in other conduct which adversely reflects on fitness to practice law;

5. DR 2-109(A) (1) – which prohibits an attorney from bringing a legal action, conducting a defense or asserting a position merely for the purpose of harassing or maliciously injuring another person;

6. DR 2-109(A) (2) – which prohibits an attorney from presenting a claim or defense in

litigation that is not warranted under existing law, unless it can be supported by a good faith argument for the extension, modification or reversal of existing law;

7. DR 2-110(A) (2) – which prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for the employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules;

8. DR 5-102(A) – which requires an attorney to withdraw as counsel, if, after undertaking employment in contemplated or pending litigation, the attorney learns or it is obvious that he or his firm may be called as a witness on behalf of his client, although he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client;

9. DR 5-102(B) – which requires a lawyer to discontinue representation in litigation when he may be called as a witness other than on behalf of his client when it is apparent that his testimony is or may be prejudicial to his client;

10. DR 5-105(A) – which requires a lawyer to decline proffered employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests;

11. DR 5-105(B) – which prohibits a lawyer from continuing multiple employment if the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests;

12. DR 7-101(A) (1) – which prohibits an attorney from intentionally failing to seek the lawful objectives of a client through reasonably available means permitted by law and Disciplinary Rules;

13. DR 7-101(A) (2) – which prohibits an attorney from intentionally failing to carry out a contract of employment entered into with a client for professional services;

14. DR 7-101(A) (3) – Which prohibits an attorney from intentionally prejudicing or damaging a client during the course of the professional relationship;

15. DR 7-102(A) (1) – which prohibits an attorney from filing a suit, asserting a position, conducting a defense, delaying a trial, or taking other action on behalf of a client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another;

16. DR 7-102(A) (2) – which prohibits an attorney from knowingly advancing a claim or defense that is unwarranted under existing law, except that such a claim or defense may be advanced when it can be supported by a good faith argument for extension, modification or reversal of existing law; and

17. DR 9-102(B) (4) – which requires an attorney to promptly pay or deliver to a client

as requested by the client funds, securities, or other properties in the lawyer's possession which the client is entitled to receive.

G. Charge II (19 DB 87) The Wiberg Case

The Board concurs in the Hearing Committee's determination that Respondent violated the following Disciplinary Rules:

1. DR 2-110(B) (4) – which requires an attorney representing a client before a tribunal to withdraw from employment and a lawyer representing a client in other matters to withdraw from employment if he is discharged by the client.

The Board also supports the Hearing Committee's conclusion that Respondent did not violate the following Disciplinary Rules:

2. DR 1-102(A) (4) – which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;

3. DR 1-102(A) (5) – which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice;

4. DR 1-102(A) (6) – which prohibits an attorney from engaging in other conduct which adversely reflects on fitness to practice law;

5. DR 2-110(A) (2) – which prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for the employment of other counsel, delivering to the client all

papers and property to which the client is entitled, and complying with applicable laws and rules;

6. DR 6-102(A) – which provides that a lawyer shall not attempt to exonerate himself or limit his liability to his client for his personal malpractice;

7. DR 7-102(A) (2) – which prohibits an attorney from knowingly advancing a claim or defense that is unwarranted under existing law, except that such a claim or defense may be advanced when it can be supported by a good faith argument for extension, modification or reversal of existing law;

8. DR 7-102(A) (3) – which prohibits an attorney from concealing or knowingly failing to disclose that which he is required by law to reveal;

9. DR 7-102(A) (4) – Which prohibits an attorney from knowingly using perjured testimony or false evidence;

10. DR 7-102(A) (5) – which prohibits an attorney during his representation of a client from knowingly making a false statement of law or fact;

11. DR 7-102(A) (7) – which prohibits an attorney from counseling or assisting the client in conduct that the attorney knows to be illegal or fraudulent;

12. DR 9-102(B) (3) – which requires an attorney to maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and to render appropriate accounts to the client regarding them;

13. DR 9-102(B) (4) – which requires an attorney to promptly pay or deliver to a client

as requested by the client funds, securities, or other properties in the lawyer's possession which the client is entitled to receive.

H. Charge III (19 DB 87) The Gallagher Case

The Board concurs in the Hearing Committee's determination to dismiss Charge III (19 DB 87). Respondent did not violate the following Disciplinary Rules:

1. DR 1-102(A) (4) – which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;

2. DR 1-102(A) (5) – which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice;

3. DR 1-102(A) (6) – which prohibits an attorney from engaging in other conduct which adversely reflects on fitness to practice law;

4. DR 7-102(A) (1) – which prohibits an attorney from filing a suit, asserting a position, conducting a defense, delaying a trial, or taking other action on behalf of a client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another;

5. DR 7-102(A) (2) – which prohibits an attorney from knowingly advancing a claim or defense that is unwarranted under existing law, except that such a claim or defense may be advanced when it can be supported by a good faith argument for extension, modification or reversal of existing law;

6. DR 7-102(A) (3) – which prohibits an attorney from concealing or knowingly failing to disclose that which he is required by law to reveal;

7. DR 7-102(A) (5) – which prohibits an attorney during his representation of a client from knowingly making a false statement of law or fact; and

8. DR 7-106(C) (5) – which prohibits an attorney from failing to comply with known local customs of courtesy or practice of the law or a particular tribunal without giving opposing counsel timely notice of his intent not to comply.

VI. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania hereby determines that the Respondent shall receive a Private Reprimand. The Board further recommends that pursuant to Rule 208(g) Pa.R.D.E., Respondent be directed to pay the necessary expenses incurred in the investigation and prosecution of this proceeding.

Respectfully submitted,

THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF
PENNSYLVANIA

By: /s/ Berle M. Schiller
Berle M. Schiller, Member

Date: August 9, 1990

Ms. Heh did not participate in the adjudication.

[LOGO]

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

11th Floor, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 787-5886

August 9, 1990

Allen L. Feingold, Esq.
809 One East Penn Square
Philadelphia, PA 19107

RE: Office of Disciplinary Counsel
v. ALLEN L. FEINGOLD
Nos. 34 DB 86 and 19 DB 87
Attorney Registration No. 03892
(Philadelphia)

Dear Mr. Feingold:

The Disciplinary Board of the Supreme Court of Pennsylvania has ordered that the expenses incurred in the investigation and prosecution of the above Petitions for Discipline are to be paid by you pursuant to Rule 208(g) of the Pennsylvania Rules of Disciplinary Enforcement. These items total $6,873.84 and are specified on the enclosed Statement.

Your attention is called to §93.112(a)(1)(i), Failure to pay taxed expenses, of the Disciplinary Board Rules, which states as follows:

> "that unless the attorney shall pay all such expenses within 30 days after the date of the notice, such failure to pay will be deemed a request for transfer to inactive status, and at the end of such period the name of the attorney will be certified to the Supreme Court, which will immediately enter an Order transferring the attorney to inactive status; and"

Copies of Rule 208(g) Pa.R.D.E. and §§ 93.111 and 93.112 of the Disciplinary Board Rules are enclosed for your information.

Very truly yours,

/s/ Nan M. Cohen
Nan. M. Cohen
Secretary

NMC/emb
Enclosure

cc: (with enclosure)
Dennis H. Eisman, Esq., Counsel for Respondent
Deborah A. Cackowski, Chief Disciplinary Counsel
Anthony P. Sodroski, Assistant Disciplinary Counsel

[LOGO]

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

11th Floor, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 787-5886

OFFICE OF DISCIPLINARY COUNSEL	:	Nos. 34 DB 86 and 19 DB 87
Petitioner	:	Attorney Registration No. 03892
v.	:	
ALLEN L. FEINGOLD	:	
Respondent	:	(Philadelphia)

NOTICE OF TAXATION OF EXPENSES *
Pursuant to § 89.205(b) Disciplinary Board Rules

1-18-86	Copies of Petition for Discipline (34 DB 86)	$ 63.70
3-25-87	Copies of Petition for Discipline (19 DB 87)	50.70
3-15-90	Copies of Hearing Committee Report	-171.60
4-10-90	Copies of Petitioner's Brief on Exceptions	182.00
4-19-90	Copies of Disciplinary Board Order	1.30
	Copies of Respondent's Memorandum of Law	91.00
5-21-87	1/4 Copying Costs of State Farm files	110.25
3-22-88	Copying Costs re Respondent's Subpoena	331.25

1-22-87	Transcript of Hearing held 11-19-86	40.95
12-01-86	Deposition of Jonathan Hale (11-25-86)	180.00
1-14-87	Deposition of Jonathan Hale (1-14-87)	250.00
3-16-87	Transcript of Hearing held 1-13, 14 & 15-87	1,499.55
7-27-87	Transcript of Hearing held 4-29-87	243.75
7-27-87	Tanscript [sic] of Hearing held 6-04-87	395.85
8-26-87	Transcript of Hearing held 6-03-87	559.65
8-26-87	Transcript of Hearing held 6-10-87	473.85
8-26-87	Transcript of Hearing held 6-23-87	146.25
8-26-87	Attendance of Hearing held 6-24-87	40.00
2-26-88	Transcript of Hearing held 1-13-88	411.45
2-26-88	Transcript of Hearing held 1-14-88	241.80
1-13&14-88	Witness Fees:	
	Karl Meckert	26.04
	Marvin Fassett	15.14
	Donna Ward Robinson	7.80
	Daniel Carter	5.00
	Carl Conway	22.93
	Joan Gallagher	8.00
	Frank Gallagher	8.00
	Catherine Wheeler	14.50

	Lawrence K. Chapman	25.39
	Jeffrey Backenstoss	17.50
7-18-88	Transcript of Hearing held 3-17-88	493.35
3-17-88	Witness Fees:	
	Marvin Fassett	15.57
	William MacMinn	18.90
	Jerry Wollard	14.42
	Byron Wiberg	19.90
	Michael P. Kelly	13.50
8-29-88	Transcript of Hearing held 3-18-88	399.75
1-25-89	Transcript of Hearing held 11-15-88	105.30
6-27-89	Transcript of Hearing held 5-23-89	157.95
	TOTAL	$6,873.84

* Failure to pay the taxed expenses on or before the date fixed for the appearance of respondent-attorney before the Board or Disciplinary Counsel for private reprimand or informal admonition, action will be taken by the Board pursuant to §93.112 of the Disciplinary Board Rules which will result in the entry of an order transferring respondent-attorney to inactive status (§89.205 D.Bd. Rules).

IN THE SUPREME COURT OF PENNSYLVANIA

NO.

DISCIPLINARY BOARD NOS. 34 DB 86
19 DB 87

OFFICE OF DISCIPLINARY COUNSEL,
Petitioner

v.

ALLEN L. FEINGOLD,
Respondent

PETITION FOR REVIEW

ALLEN L. FEINGOLD, ESQUIRE
ATTORNEY FOR RESPONDENT
ATTORNEY I.D. NO. 03892
SUITE 809
ONE EAST PENN SQUARE
PHILADELPHIA, PENNSYLVANIA
19107
(215) 564-3500

PETITION FOR REVIEW

The respondent, in proceedings below, seeks review of the Disciplinary Board's assessment of costs against him and states the following, in support thereof:

1. By Order of the Disciplinary Board dated August 9, 1990, the respondent was ordered to be subjected to a private reprimand as a result of Disciplinary Petitions 34 DB 86 and 19 DB 87.

2. In Disciplinary Petitions 34 DB 86 and 19 DB 87, the respondent was charged in eight (8) separate incidents.

3. By Order dated August 9, 1990, the Disciplinary Board dismissed six (6) of the eight (8) charges.

4. The Disciplinary Board concluded that the respondent was subject to a private reprimand as to parts of two charges, Charge III (34 DB 86) the Hale matter and Charge IV (34 DB 86) the Valentine/Corbin matter.

5. By letter dated August 9, 1990, the Disciplinary Board assessed costs against the respondent in the amount of $6,873.84.

6. The Disciplinary Board's assessment of costs are unreasonable, since it assessed costs against the respondent for matters, and parts of matters, which were dismissed by the Board.

7. If the respondent is subject to the payment of costs, it should be limited to the parts of matters in which the Board found a violation of the Disciplinary Rules, Charge III (34 DB 86) the Hale matter and Charge IV (34 DB 86) the Valentine/Corbin matter.

8. The respondent may only be subjected to costs, if any at all, for those portions of the transcript which relate to the parts of matters listed in paragraph seven (7), November 25, 1986, January 13, 1987, January 14, 1987, January 15, 1987, April 29, 1987, June 3, 1987, June 4, 1987 and June 10, 1987.

9. The respondent may not be held responsible for the costs of copies of any documents which do not relate to the parts of matters listed in paragraph seven (7).

10. The respondent may not be held responsible for the witness fees since they do not relate to the matters listed in paragraph seven (7).

11. The respondent may not be held liable for the costs of the Disciplinary Petitions which do not relate to the matters listed in paragraph seven (7) above.

12. The respondent may not be held responsible for the costs of copying of his own subpoena and Memorandum of Law or the Petitioner's Brief on Exceptions.

13. Moreover, the costs, which the respondent may be held responsible for, if any, are unreasonable and not in accordance with market place costs.

WHEREFORE, the respondent respectfully requests this Court to grant this Petition for Review.

Respectfully submitted,

/s/ Allen L. Feingold
ALLEN L. FEINGOLD, ESQUIRE
ATTORNEY FOR RESPONDENT

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 765 Disc. Dkt. No. 2
Petitioner	:	Nos. 34 DB 86 19 DB 87
v.	:	
ALLEN L. FEINGOLD	:	Attorney Registration
Respondent	:	No. 03892
	:	(Philadelphia County)

ANSWER OF PETITIONER, OFFICE OF DISCIPLINARY COUNSEL, TO RESPONDENT'S PETITION FOR REVIEW

OFFICE OF DISCIPLINARY COUNSEL

Deborah A. Cackowski
Chief Disciplinary Counsel

Paul J. Burgoyne
Counsel-In-Charge
District I Office

121 S. Broad Street
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Philadelphia, PA 19107
(215) 560-6296

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 765 Disc. Dkt. No. 2
Petitioner	:	Nos. 34 DB 86 19 DB 87
v.	:	
ALLEN L. FEINGOLD	:	Attorney Registration
Respondent	:	No. 03892
	:	(Philadelphia County)

ANSWER OF PETITIONER, OFFICE OF DISCIPLINARY COUNSEL, TO RESPONDENT'S PETITION FOR REVIEW

Petitioner, Office of Disciplinary Counsel by its attorneys, Paul J. Burgoyne, Counsel-In-Charge and Deborah A. Cackowski, Chief Disciplinary Counsel respectfully responds to the Petition for Review filed by Respondent in this matter as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied as stated. In its Order dated August 9, 1990, the Disciplinary Board ordered that Respondent be subjected to a private reprimand. The Board further ordered that the costs be paid by Respondent. A copy of the Order was sent to Respondent by the Secretary of the

Board. The Order was accompanied by a Notice of Taxation of Expenses ("Notice") enumerating the costs payable by Respondent.

6. Denied. Rule 208(g)(2), Pa.R.D.E. ("Enforcement Rules") provides that in matters resulting in private discipline the Board may "in its discretion direct that the necessary expenses incurred in the investigation and prosecution of the proceeding, shall be paid by the respondent-attorney." See: §89.205(b), D.Bd. Rules, Section 93.111 of the Board Rules, entitled "Taxation of Costs: Determination of reimbursable expenses," lists some of the expenses which the Board may include in the order. Each of the costs enumerated in the Notice sent by the Board Secretary to Respondent pursuant to the Board's Order of August 9, 1990 is a cost listed in §93.111(b).

By way of further answer, each of the costs contained in the Notice was incurred during the investigation and prosecution of the proceeding against Respondent. While neither the Enforcement Rules nor the Disciplinary Board Rules define "proceedings," it is clear from the rules that all of the costs incurred in this matter were incurred during the course of a proceeding. The rules provide that "informal proceedings" include "all investigations," and that "formal disciplinary proceedings" are instituted by filing a Petition for Discipline. (Enforcement Rules 208(a)(1) and 208(b)(1))

7. Denied. The Board has the discretion to require respondent-attorneys to pay the costs incurred in the investigation and prosecution of proceedings. Taxation of costs is a matter of discretion exercised by the Board

based on its knowledge of the entire record of the disciplinary proceeding and should not be overturned absent a showing of abuse of discretion.

8. Denied. A respondent-attorney may be subjected to payment of all costs incurred in the investigation and prosecution of a disciplinary proceeding resulting in the imposition of private discipline. The division, allocation and abatement of costs is a matter within the sound discretion of the Board.

9. Denied. This paragraph is denied for the reasons expressed in paragraph 8.

10. Denied. This paragraph is denied for the reasons as contained in paragraph 8.

11. Denied. This paragraph is denied for the reasons as contained in paragraph 8.

12. Denied. This paragraph is denied for the reasons as contained in paragraph 8. By way of further answer, copies of the briefs of the parties are necessary to provide Board Members with a complete record of the proceedings for the purpose of adjudication. The cost of making copies of documents in response to the subpoena of a respondent-attorney is a necessary and reasonable cost of the proceeding.

13. Denied. The cost assessed to Respondent in the Secretary's notice for matters arising out of the investigation and prosecution in this matter are equal to or less than those charged by other similarly situated agencies and by various prothonotaries and clerks of court.

WHEREFORE, Petitioner respectfully requests that your Honorable Court deny Respondent's Petition for Review.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Deborah A. Cackowski
Chief Disciplinary Counsel

By /s/ Paul J. Burgoyne
Paul J. Burgoyne
Counsel-In-Charge

IN THE SUPREME COURT
OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 765 Disciplinary Docket No. 2
Petitioner	:	Disciplinary Board Nos. 34 DB 86 and 19 DB 87
v.	:	
ALLEN L. FEINGOLD	:	
Respondent	:	Attorney Registration No. 03892 (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 3rd day of October, 1990, Respondent's Petition for Review is denied.

TRUE COPY FROM RECORD
Attest: October 4, 1990

/s/ Bernice G. LaBoo
BERNICE G. LaBOO
Chief Clerk, Supreme Court of
Pennsylvania, Eastern District